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CIVIL AFFAIRS INFORMATION GUIDE

The Administration of Justice in France

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TABLE OF CONTENTS

Page

Summary.. v

I. French System of Law.............................. 1

- A. Code System..................................... 1
  - 1. Significance of the French Code System........ 1
  - 2. Compilation of Statutes....................... 1
  - 3. Enactment of Law in Statutory Form............ 3
  - 4. Judicial Process under Code Law and under Common Law.................. 4
- B. Types of Legislation............................ 6
  - 1. Statutes...................................... 6
  - 2. Decree-Laws................................... 6
  - 3. Decrees and Orders............................ 7
  - 4. Local Ordinances.............................. 8
- C. Effects of Vichy on the Legal System............ 8
  - 1. Changes....................................... 8
  - 2. Additions..................................... 8
- D. Problems of the Liberation...................... 9
  - 1. Restoring the Legal System of the Third Republic........ 9
  - 2. Nullification of Vichy Legislation............ 10
    - a. Types of Legislation........................ 10
    - b. Total or Partial Nullification.............. 10
    - c. Agencies of Nullification................... 11
      - i. The Courts................................ 11
      - ii. Administrative Officials................. 12
      - iii. A Legislative Body...................... 12

II. System of Courts................................. 13

- A. Under the Third Republic........................ 13
  - 1. Justice of Peace Courts....................... 13
    - a. Distribution; Composition................... 13
    - b. Jurisdiction................................ 13
    - c. Appeal...................................... 14
  - 2. District Court................................ 15
    - a. Distribution; Composition................... 15
    - b. Jurisdiction................................ 15
    - c. Appeal...................................... 16

II. System of Courts (continued)

Page

3. Court of Appeals........................ 16
    a. Distribution; Composition......... 16
    b. Jurisdiction...................... 17
    c. Appeal............................ 17
4. Court of Assizes........................ 17
    a. Distribution; Composition......... 17
    b. Jurisdiction...................... 18
    c. Appeal............................ 18
5. Court of Cassation...................... 18
    a. Composition....................... 18
    b. Jurisdiction...................... 19
6. Prudent Men's Councils.................. 20
    a. Distribution; Composition......... 20
    b. Jurisdiction...................... 20
    c. Appeal............................ 21
7. Commerce Court.......................... 21
    a. Distribution; Composition......... 21
    b. Jurisdiction...................... 21
    c. Appeal............................ 22
8. Military Tribunals...................... 22
    a. Distribution; Composition......... 22
    b. Jurisdiction...................... 22
    c. Appeal............................ 23
9. Administrative Courts................... 23
    a. Explanation....................... 23
    b. Inter-department Prefectural Councils.......................... 24
    c. Council of State.................. 24
        i. Composition................... 24
        ii. Jurisdiction................. 24
10. Court of Conflicts..................... 25
    a. Composition....................... 25
    b. Jurisdiction...................... 26
11. High Court of Justice.................. 26
12. Summary................................ 27
    a. Criticisms........................ 27
    b. Commendations..................... 28
B. Vichy and the Courts........................ 28
1. General................................ 28
2. Modifications in Previous System....... 29
3. Vichy Additions to Court System........ 29
    a. Supreme Court of Justice.......... 29
    b. Council of Political Justice...... 30
    c. State Tribunal.................... 31
    d. Special Criminal Court............ 31
    e. Special Sections within Court of Appeals............................ 32
        i. Court for Night Offenses... 32
        ii. Sections to Try "Communists"........... 32

II. System of Courts (continued) Page
B. Vichy and the Courts (continued)
    f. Court-Martial of Gannat.............. 32
    g. Special Courts-Martial............... 33
    h. Summary.............................. 33
C. Problems of Reorganization............... 34

III. Judges.................................. 37

A. Under the Third Republic................. 37
    1. Non-professional Judges.............. 37
    2. Justices of the Peace................ 38
    3. The Higher Judiciary................. 39
        a. Requirements for Entrance........ 39
        b. Promotion........................ 40
        c. Social Position.................. 40
B. Judges under Vichy....................... 41
    1. Initial Removals..................... 41
    2. Replacements......................... 41
    3. Subordination to Instructions........ 41
    4. Instances of Defiance................ 42
C. Restoration.............................. 43

IV. Legal Profession......................... 44

A. Organization............................. 44
    1. The Parquet.......................... 45
    2. Advocates (the "Bar")................ 46
        a. Functions of Advocates........... 46
        b. Position of the Bar.............. 47
    3. Solicitors........................... 49
    4. Commercial Lawyers................... 50
    5. Notaries............................. 50
    6. Consultants.......................... 51
    7. Court Clerks......................... 52
    8. Bailiffs............................. 52
B. Effects of Vichy on the Legal Profession... 53
    1. Formal Attacks....................... 53
    2. Undermining the Profession........... 53
C. Problems of the Liberation............... 54

V. French Criminal Justice.................. 57

A. Steps in Prosecution and Punishment...... 57
    1. Preliminary Hearing.................. 57
        a. Grades of Offenses............... 57
            i. Felonies..................... 57
            ii. Misdemeanors................ 58
            iii. Contraventions............. 58

V. French Criminal Justice (continued) Page

- b. Direct Citation for Trial 58
- c. Examining Judge 59
- 2. Indictment: the Accusation Chamber 60
- 3. Chart 61
  - Chart of Typical Prosecution of Crime in France and in the United States 62
- 4. Trials for Criminal Offenses 63
  - a. Inquisitorial and Accusatorial Procedure 63
  - b. Function of the Court in French Criminal Trials 63
  - c. Function of the Jury in French Criminal Trials 64
  - d. Civil Party in a Criminal Trial 66
- 5. Appeals 67
- 6. Penalties 68
- 7. Rights of the Accused 68
  - a. Rights which are Guaranteed 68
    - i. Ex Post Facto Laws 68
    - ii. Speedy Public Trial 69
    - iii. Opportunity for Defense by Counsel 69
    - iv. Jury Trial 69
    - v. Self-incrimination 70
  - b. Rights which are not Guaranteed 70
    - i. Habeas corpus 70
    - ii. Proof "Beyond a Reasonable Doubt" 71
- 8. Procedure in Military Courts 71
- B. Changes since the Outbreak of War 71
  - 1. Changes before the Armistice 71
  - 2. Changes Effected by Vichy 72
- C. Problems of the Liberation 73

VI. French Justice in Civil Affairs 75

- A. Divisions of Jurisdiction 75
- B. Procedure in the Various Courts which Handle Civil Affairs 76
  - 1. Conciliation 76
  - 2. Summons 77
  - 3. Contentions of the Parties 77
  - 4. Evidence 79
  - 5. Judgment 81
- C. Vichy and the Problems of Liberation 82

SUMMARY

1. The liberation of France will pose the problems of restoration for French laws, the courts, judges, the legal profession, and the normal processes of justice. This report outlines the organization of judicial affairs under the Third Republic and notes the changes and additions made by the Vichy Government since July 1940.

2. At the basis of the whole legal system is the set of codes, begun under Napoleon I and today copied by most of the nations of the world. Codification of statutes has led French justice to be administered more in terms of the spirit of the law as it applies to each case and less in terms of stare decisis or judicial precedent, which is so fundamental in English-speaking countries. Vichy has not altered the contents of the various codes, but the totalitarian emphasis on the State has defeated the spirit of republican law and has worked to the detriment of the individual.

3. The French courts are divided into two groups: (1) The ordinary civil and criminal courts which handle disputes between private parties and trials of private citizens, and (2) The administrative courts, which hear complaints against official acts of the Government. Vichy has let the second group fall into disuse, for the State in the New Order is not answerable to those it rules. Furthermore, the Pétain regime has added courts of its own creation. The latter have been designed to enforce totalitarian political controls

and racial discrimination. The French people, once they can act for themselves, will scarcely permit any of these new tribunals to survive the period of suppression of which they are one expression.

4. The bench and the public ministry of France are entirely separate from the private practitioners of law. A young law student chooses either to work for a place in the "magistracy" or else to enter the practice.

5. The most important portion of the magistracy is the higher judiciary, which has a rigid code of etiquette and professional discipline. It has been purged of Vichy's political enemies, insofar as possible, but some members of the bench have clung to their independence in the face of governmental pressure and punishment. The liberation of France will undoubtedly see a counter-purge of the pro-Vichy judges. Freeing the courts will be ineffectual until the independence of the judges has been restored.

6. The legal profession outside the judiciary includes advocates, solicitors, notaries, commercial lawyers, consultants, court clerks, and process-servers, all of whom fall under the classification of "auxiliaries," and the staffs of the Attorneys-General and District Attorneys, who make up the parquet or public ministry. Vichy has attacked Jews, Free Masons, Gaullists, and Communists among the lawyers and has seen to their replacement by many men of inferior quality and trustworthiness. The profession is fortunately well

organized and can be expected to return to its standards once it is rescued from the present restraints.

7. French criminal justice has long been noted for its speed, its efficiency, and the inquisitorial nature of its procedure. Some of the penalties are harsh, but under the Republic there was a recognition of certain rights of the accused which Vichy has tended to suppress in favor of more arbitrary handling. Discrimination on the basis of race and politics is one feature which discredits the influence of the Pétain regime; governmental interference in reaching judgments is another.

8. Civil justice, which rests upon the excellent Civil Code, was criticized before Vichy for its slowness and expense but seldom for any lack of fairness. Vichy has not tampered sugnificantly with civil justice, except that interference with judges cannot help lowering the standards of all courts. France has native peculiarities in the administration of justice which **make** indispensable a procedure of restoration by the French themselves. Criticisms as to details of the old system do not lessen the Frenchman's determination to eradicate the controls of Vichy and Berlin and to return to laws, courts, and judicial personnel consistent with personal freedom.

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THE ADMINISTRATION OF JUSTICE IN FRANCE

I. FRENCH SYSTEM OF LAW

A. Code System

1. Significance of the French Code System. French law shares with English common law the distinction of being one of the two legal systems in wide use among modern industrialized nations. The French legal system has been copied not only in regions with a direct French heritage, like Louisiana and Quebec, but also in nearly all the countries of Europe, throughout Latin America, and in Egypt, Turkey, and Japan. Even where it has not been copied in detail, it has had profound influence, as in the many American states which have adopted the code principle to a limited degree.

The "codes" of many of the United States are, however, far from the code system as it is known in France and in countries which have closely copied her institutions. It is important to see the real differences between the system of law in most of the United States and in France. These differences are marked in:

(1) The compilation of statutes.

(2) The enactment of law in statutory form.

(3) The judicial process.

2. Compilation of Statutes. The first purpose of the men who codified French law under Napoleon was to gather in one place the statutes which govern men's conduct. In England or France at that time, the governing statute on any particular

subject might repose in any of the parliamentary records of several preceding centuries. In the American states, the situation was even further complicated, since a lawyer had to know which of the English statutes applied in the colonies, and had also to consider the applicability of the acts of state and colonial legislatures.

The French were the first nation in modern times to attempt assembling their laws into one official repository -- the codes. The French example gave a powerful impetus to a similar movement in the American states, many of which, during the course of the nineteenth century, also assembled their laws into "codes." In states which did not officially codify their laws, private publishers prepared compilations which had almost the same effect in making the statute law available to lawyer and laymen. In respect to the compilation of statute law, therefore, the practical difference between the French system and the common law system is not great at the present time. But compilation is only one of three important points of differentiation.

The French codes adopted in the Napoleonic era were five in number, only one of which, the Civil Code (code civil) is properly called the "Code Napoleon." The other four were the Code of Civil Procedure (code de procédure civile), the Penal Code (code pénal), the Code of Criminal Procedure (code d'instruction criminelle) and the Commercial Code (code commercial). While these codes contained the bulk of the law which was of interest to the ordinary layman, a considerable body of law remained outside them. This body grew as parliaments proceeded to legislate without further codification. Some of the additional law has since been compiled in the Military Code (code militaire), the Forest Code (code forestier) and the Labor Code (code de travail), and various taxation codes. There remain uncodified large bodies of law regarding government administration and social welfare, as well as various statutes which supplement the codes but which have never been formally incorporated. Privately published digests or compilations (recueils) must be relied on to find these laws.

3. Enactment of Law in Statutory Form. The second purpose of the Napoleonic codifiers was to put all law into the form of statutes enacted by the parliament. In France, as in common law countries, much of the law had never been written down as an express command. In England, for example, it was nowhere expressly stated that thievery was a crime to be punished by hanging, although judges had followed this rule so often that it was generally recognized. The codifiers aimed to write down all such rules in plain terms, and have them enacted by the legislature. The written rules could then be assembled in the codes.

With respect to the enactment of rules which were previously contained only in judicial decisions and customs, France has far surpassed any common law country. In most American states, the legislature has never yet enacted the elementary rule that a binding contract may be made by mutual agreement of the parties, or that assault and battery shall be recompensed in damages. Law of this kind can be found only in decisions of the courts, or in privately published textbooks and encyclopedias which may be reliable, but are never binding on the courts. In France, on the other hand, all the rules by which courts are governed in ordinary civil disputes are derived more or less directly from some express enactment of the legislature. The only substantial body of law which does not rest on statutory provisions is in a field so new that it is still developing -- that of administrative law. Most of this has grown up since 1872.

4. Judicial Process under Code Law and under Common Law. The third purpose of the framers of the French codes was to escape from the rule of "precedents" in the administration of justice. Before most of the law had been put in statutory form, judges relied primarily on prior practice in making their decisions. Times might change, and the old rule become hopelessly out of date, but the judges followed the old rule for lack of any other. In common law countries, this practice is known as stare decisis -- to stand by the decisions previously made. The French codes specifically forbade any such practice, and required the judge to follow the words of the statute as they were written, rather than any previous interpretation of it.

In conformity with the letter of the law, French judicial decisions contain no such discussion of the previous rulings as will be found in the opinion of common law judge. After a long series of whereas clauses (attendu que ....), which recite the facts and cite the provision of the code, the judge gives his decision with little to reveal how he figured it out.

The apparent simplicity of French opinions conceals their real complexity. Frequently the governing code provision states only a very general principle, such as the rule that he whose fault causes injury to another shall pay for the damage. "Fault" may mean intention to injure, or mere negligence; "cause" may refer to direct consequences, or to very remote connections. In deciding how to give judgment in such a case, a French judge is guided by two principal sources of authority in addition to the statute. First, there are the opinions of prominent writers, usually university professors, which are known as "doctrine." Second, there are the previous decisions, which are called "jurisprudence." The language of the judge reveals to a shrewd observer which lines of doctrine and jurisprudence were followed in the decision.

In spite of the influence of doctrine and jurisprudence on French judges, their methods mark them off fairly sharply from the common law brethren. First, they are governed primarily by statutes, rather than by cases. Second, when they cannot decide the case with the aid of the statute alone, they give a relatively greater emphasis to doctrine as opposed to jurisprudence. Third, they do not hesitate to interpret a statute in a new and surprising way merely because previous cases have decided otherwise.

B. Types of Legislation

1. Statutes. The supreme law of the land, which no official is privileged to disregard, and no court can invalidate, is laid down by the statutes of parliament. They are called lois, a term which is rather more restrictive than the English word "laws." Before taking effect, they must be published in the governmental publication, the Journal Officiel.. If a change is made in the law of contracts, for example, it will ordinarily be effected by a statute which modifies some section of the Civil Code. The great bulk of laws currently enacted, however, do not affect the codes. Relating as they do to the exercise of powers by the government, the regulation of trade and industry, or the extension of social services, they augment the body of uncodified French law.

2. Decree-Laws. The inability of parliament to agree promptly on legislative measures in the foreign and domestic crises of the past thirty years has given rise to a new form of legislation which has no counterpart in the governmental practices of the United States, although it may be compared to the exercise of special powers in wartime by English and British dominion governments. In effect, the parliament delegates its power of legislation for a limited time to the cabinet. It reserves the right to ratify or overrule at the end of a specified time the legislation which the government has already put into effect. The only limitation on the

legislative power which is delegated in this way is that it must relate to a specified subject, such as national defense or maintaining the value of the franc.

These "decree-laws" (decrets-lois) are signed by the "chief of state," -- under the Third Republic, the President -- and are countersigned by one or more of the ministers. There has been some disagreement on the extent to which a decree-law is subject to invalidation by decision of the courts; as yet, the Council of State has not undertaken to set one aside. A decree-law presumably attains the dignity of a statute when parliament ratifies it expressly or fails to repeal it.

3. Decrees and Orders. A more restricted type of executive legislation is accomplished by decrees (decréts). Like decree-laws, decrees are signed by the chief of state and countersigned by one or more ministers.

Decrees are not a symptóm of abnormal crisis but are a customary feature of French government at all times. When a statute provides for the nationalization of the police of a city, it is likely to state that the details of the national organization must be specified by decree. The Minister of the Interior then prepares a decree specifying the number of departments, the number and the salaries of officers, and so on. A decree of this sort may be compared with certain of the Executive Orders issued by the President of the United States. Other decrees, governing the use of highways or railroads, may be more like the regulations issued in the United States by the Interstate Commerce Commission.

In addition to decrees of a legislative character, cabinet ministers usually issue large numbers of simple orders (arrêtés), signed themselves alone. Scores of such orders appear in every issue of the official gazette (Journal Officiel), effecting appointments and dismissals, and relating to other matters of limited application.

4. Local Ordinances. Since France has no states, there is no interlocking of state and federal laws as in the United States. There are, nevertheless, legislative rulings of purely local application, somewhat comparable to the ordinances of American cities or (in a few instances) of counties. In France, they are called arrêtés. Prefects have power to issue ordinances relating to health and safety within their departments, and mayors within their communes. The powers of mayors are somewhat broader than those of prefects, but both are limited. They cannot, of course, affect civil rights to any substantial degree, and the criminal penalties which they may impose cannot exceed a fine of fifteen francs (less than a dollar) or five days in jail.

C. Effects of Vichy on the Legal System

1. Changes. In the texts and the legal force of the codes, Vichy has made no significant changes. A few provisions have been changed here and there, and criminal penalties have been increased, but the framework remains untouched.

2. Additions. On the other hand, Vichy has in large measure transformed the workings of the legal system by imposing a number of emergency decrees which so circumscribe the life of

a Frenchman as to make the simplicity and logic of the codes of little practical use. That the number of these enactments is excessive was recognized by Pétain himself when he declared in an address to the French people:

> "My work and that of my Government are not always exempt from criticism ...
>
> Complaints are made of the vexatious ways of certain departments and the discourtesy of officials. The Government must accept a share of responsibility for this, for the offices of the prefects and mayors are submerged under a flood of regulations and decrees the application of which, always a matter of urgency, leaves no leisure nor breathing space to the officials who have to interpret them...."

Vichy's legislation is peculiar from a legal point of view in that none of it is in the form of parliamentary statutes. The so-called "statutes" of Vichy are at best decree-laws. They are issued by Pétain to whom plenary powers were delegated by Parliament on 10 July 1940, according to the constitutional theory of Vichy. The merits or demerits of this viewpoint will not be discussed here, but some of the legal problems which arise from it will be referred to.

D. Problems of the Liberation

1. Restoring the Legal System of the Third Republic. Since the legal system of the Third Republic has not been directly impaired, neither legislation nor proclamations would be necessary to restore it. It need only be permitted to resume its normal functioning through the restoration of law and order, and the nullification of many of the emergency decrees and governmental agencies which have been superimposed upon it.

It is true that the codification of much of the prewar legislation remains a needed reform, but it is not immediately urgent.

2. Nullification of Vichy Legislation

a. Types of Legislation. An urgent and difficult problem is presented by the mass of decree-laws, decrees, and ministerial orders which have been issued by Vichy. Some of this legislation is patently vicious, like the rules against Jews and against citizens of foreign origin, and the establishment of extraordinary criminal courts. In some cases it effects "reforms" of disputable merit, like the reorganization of labor and professional organizations, and regulations in protection of the family. In some cases it appears to effect necessary adjustments to the changes of the time. One type of legislation coming within the latter class is that adjusting salaries, fee scales, and jurisdictional requirements to the depreciated value of the franc. Another type is that extending the time for assertion of rights by laborers and prisoners of war in Germany.

b. Total or Partial Nullification. Two possible ways of dealing with this legislation present themselves:

(i) Declaring all Vichy legislation invalid.

(ii) Setting some portions aside, while permitting some to remain in force.

A strong argument has been made by some patriotic Frenchmen, typified by Tissier, for the total invalidity of everything that Vichy has done. Against this solution there is a theoretical argument, since somewhat arbitrary assumptions of power have been made at previous periods in France and have been given legal sanction. There is also a practical argument, in that the sweeping away of all Vichy legislation would probably create acute problems in those cases where necessary adjustments to new conditions have been made by the Vichy regime. Even where reforms of doubtful value were made, as in the reorganization of professional associations, the sudden abolition of the new organizations would not reinstate their predecessors in full vigor, and the result might be the lack of any controls.

In any event, a distinction must be drawn between the purported statutes of Vichy, and the decrees of ministers, some of which might be justified under pre-Vichy legislation. Mayors and prefects may have issued ordinances at the behest of the new regime which are sustainable under prior statutes. There will certainly be a complex interlocking of valid legislation with legislation which may be considered void.

c. Agencies for Nullification.

i. The Courts. The courts have been accustomed to assume in America the function of declaring statutes and orders invalid when they violate either the procedural or the substantive law of the United States. But there are serious obstacles to the exercise of this function in France. Only one court -- the Council of State -- has exercised this function extensively and even it has not done so with regard to statutes. Its power with respect to decree-laws is doubted.

Consequently one might expect some timidity and ineptitude in judges unaccustomed to consider nullification as one of their powers. Moreover, there is no body of constitutional inhibitio and judicial precedents which could guide different courts toward uniform conclusions in the invalidation of laws.

ii. Administrative Officials. Administrative officials, either civilian or military, might conceivably proclaim the abrogation of certain legislation and the ratification of other enactments. Undoubtedly this means would work fairly well in some instances; the Minister of Justice, for example, might announce the restoration to the magistracy of Jews and naturalized citizens who were dismissed by the Pétain government. However, this method involves difficulties where the right involved came into dispute. A judge or official might hesitate to act on an administrative proclamation of invalidity, wondering whether the administrative proclamation had any greater claims to validity than the original law or decree. It is important to remember that the French legal system is based on a close adherence to formal law, with which neither judges nor officials are accustomed to take liberties.

iii. A Legislative Body. A reconstituted parliament or National Assembly would evidently be able to obtain the smoothest results in dealing with Vichy legislation. It could repeal, reenact, or modify as it should see fit. Since French officials are accustomed to regard the acts of parliament as valid, without questioning their antecedents, the emergency or temporary character of the legislative body would be unlikely to create acute administrative difficulties.

II. SYSTEM OF COURTS

A. Under the Third Republic

1. Justice of the Peace Courts (justices de paix).

a. Distribution; Composition. Every canton in France has at least one Justice of the Peace Court, although the same judge may serve in several cantons. Large cities are divided into several districts (arrondissements de juge de paix). There were in 1940 almost three thousand Justices of the Peace. Within the court of the Justice of the Peace is found the only exception to the collegial principle in France. All other courts are normally presided over by a panel of judges; but the Justice of the Peace sits alone and delivers judgment without consulting colleagues.

The court, it should be noted, is called a justice de paix. The Justice who presides in it, corresponding to an American Justice of the Peace, or "magistrate," is called a juge de paix.

b. Jurisdiction. Constituted as the Police Court (tribunal de simple police), the Justice of the Peace hears criminal cases dealing with the mildest type of criminal offenses. These are called contraventions and are chiefly transgressions against local ordinances relating to obstruction of public streets and other nuisances. Penalties for contraventions cannot exceed a fine of fifteen francs (less than a dollar), and five days in jail.

The civil jurisdiction of the Justice of the Peace extends to ordinary civil suits involving debts or personal property where the amount involved does not exceed a certain limit. The maximum was repeatedly increased, and in 1939 stood at 4,500 francs. For specified types of suits such as landlord-tenant and trespass cases, the jurisdiction was unlimited. In 1938 the Justices were given plenary jurisdiction of cases involving workmen's compensation and social security claims.

The Justice of the Peace is also president of the local Family Council (conseil de famille), in which capacity he appoints and supervises guardians of the estates of widows, minors, and mental incompetents.

One of the Justice's most important functions is that of conciliation: he is charged with seeking to arrange settlements out of court. An ordinary lawsuit cannot be commenced in the Civil Tribunal without having a certificate showing that it has been first submitted to a Justice of the Peace for an attempted conciliation. The Justices preside over such proceedings in over seven hundred thousand cases each year. It is estimated that in rural areas, where conciliation attempts are more frequently successful, about 40 percent of the cases brought into the proceedings are settled.

c. Appeal. In civil cases involving less than 1,500 francs, there is no appeal from a decision of the Justice of the Peace, unless he has exceeded his jurisdiction. In the latter case, his judgment may be annulled by the Court of

Cassation (cour de cassation). This seldom happens, for the costs of the appeal are out of all proportion to the size of the claim. Decisions in excess of this limit may be appealed to the District Court.

2. District Court (tribunal d'arrondissement).

a. Distribution; Composition. Each of the 359 judicial districts of France has its District Court sitting in the chief town of the district. It is a tribunal composed of an odd number of judges who are members of the magistracy (magistrature) and thus men of more education and experience than Justices of the Peace. The size of the bench varies with the importance of the particular District Court. The simplest panel includes a president, two subordinate judges (conseillers), and two alternate judges. In a large city, on the other hand, there are many more judges and several separate chambers to handle the various classes of business.

b. Jurisdiction. The District Court sits in two divisions, known as the Civil Court, (tribunal civil), and the Criminal Court, (tribunal correctionnel). In a large city, each division may have several chambers. From time to time, judges are transferred from one division or chamber to another. The Civil Court exercises general jurisdiction in civil matters which are not specifically entrusted to other tribunals, such as the small claims handled by the justices, commercial cases, and matters of "administrative law." The Civil Court hears appeals from the Justices of the Peace and from the "Prudent

Men's Council" (conseils de prud hommes) where the amount involved exceeds a certain sum, and so it is not strictly a "court of first instance," (tribunal de première instance), as it is sometimes called.

The criminal division of the District Court tries persons accused of misdemeanors (délits).

c. Appeal. As in the Justice of the Peace court, so in the District Court there must be a minimum money value involved (in most cases 7,500 francs) before a civil dispute can be carried up to the Court of Appeals (cour d'appel). In disputes of less importance there is no appeal except on questions of law; in such cases, the appeal goes directly to the Court of Cassation. Criminal cases can always be taken to the Court of Appeals.

3. Court of Appeals

a. Distribution; Composition. There is a Court of Appeals for each of the twenty-seven appeal districts of France, Algeria, and Corsica. Like the District Court, the Court of Appeals' size depends upon the importance of its particular district. The judges have usually been promoted from a District Court position. The basic structure of a Court of Appeals includes three chambers. One considers civil appeals from the District Civil Courts and the Commerce Courts. A second handles appeals from the District Criminal Courts. A third, the Accusation Chamber (chambre des mises en accusation), acts in the capacity of a grand jury, framing indictments of felony, which will be tried in the Court of Assizes.

b. Jurisdiction. As its name indicates, the principal work of the Court of Appeals, involves decisions brought to it for correction from lower courts. It hears appeals from the District Civil Court and Commerce Court, where more than 7,500 francs are involved, and from the District Criminal Court in all cases. Unlike most American appellate courts, the Court of Appeal does not confine itself to errors of law committed by the court below. It may review the evidence and make new findings of fact.

The functions of the Accusation Chamber are not appellate at all, but investigative and accusatory. They are more fully explained below in the section on "Criminal Justice."

c. Appeal. Appeal from the Court of Appeals can be carried only to the Court of Cassation, and is restricted to points of law. There can be no higher judgment on the facts (au fond).

4. Court of Assizes (cour d'assises).

a. Distribution; Composition. The Court of Assizes is the only itinerant French court, covering a circuit which varies from as few as two departments in some cases to as many as five in others. It is a nonpermanent court, holding session in the principal town of each department three times a year. The bench is composed of a president, who must be a judge of the Court of Appeals in that district, and two judges who are temporarily assigned to the Assizes from either the Court of Appeals or the local District Court. It is the only

French court which uses a trial jury. The latter is composed of twelve members and two alternates.

b. Jurisdiction. The Court of Assizes has one sole item of business: the trying of the most serious offenses, which the French call crimes and which the English-speaking peoples call felonies. This completes the coverage of criminal cases. The Justice of the Peace tries contraventions. The District Criminal Court tries misdemeanors.

c. Appeal. Appeal from the Court of Assizes can be carried only to the Court of Cassation. No question can be raised as to the decision regarding facts. The Court of Cassation can simply be asked to examine points of law involved.

5. Court of Cassation (cour de cassation).

a. Composition. The supreme court of France for all cases except those of administrative law is the Court of Cassation. Cassation means the "breaking," or reversal, of erroneous judgments of tribunals. The court sits in Paris and hears appeals from every part of the French Empire. At the head of the Court there is a "first president." Under him there are four chambers, each with its own president and panel of several judges. The names of two of these divisions make their roles self-evident: the Criminal Chamber (chambre criminelle) and the Civil Chamber (chambre civile). The third is the Chamber of Requests, which screens appeals to the Civil Chamber and determines whether or not the appeal merits consideration by the latter body. Its activity may be compared to the grant or denial of petitions for certiorari in the United States Supreme Court.

A fourth division of the Court of Cassation, called the Social Chamber (chambre sociale) was added in 1938. It is apparently designed to protect the public interest in justice in cases where the parties would be unable to prosecute their own appeals with sufficient vigor. Entrusted to it are matters such as appeals from Justices of the Peace and from "Prudent Men's Councils," workmen's compensation cases, and matters involving wards of the State.

b. Jurisdiction. The Court of Cassation hears appeals from lower courts, including, in peacetime, Military Tribunals (tribunaux militaires), based on points of law only. It does not presume to question the facts as found by the lower courts. It will occasionally annul a previous decision and dismiss the case outright; but this is only under rare and peculiar circumstances. Normally the function of the Court of Cassation, if it disagrees with the legal conclusions of the lower court, is merely to quash (casser) the judgment. The case is then remanded for rehearing in a lower court which has not previously heard the case. If the second court rejects the Court of Cassation's views (as it is permitted to do), and repeats the decisions of the original lower court, the case comes again to the Court of Cassation, which sits in solemn session (all chambers present) to consider the question. If it persists in its previous decision and again remands the case to a third lower court, this last court is bound to implement the opinion of the Court of Cassation.

6. Prudent Men's Councils (Conseils de prud'hommes). Besides the regular hierarchy of civil courts under the Court of Cassation there are three special jurisdictions which need to be mentioned. One of these is the Prudent Men's Council. This title, which sounds quaint in English is not less so in French; it reflects the belief of its revolutionary founders that "common sense" would furnish the rationale of its jurisprudence.

a. Distribution; Composition. In any locality where enough municipal groups, such as the chamber of commerce, desire it, a Prudent Men's Council may be established by decree of the Minister of Justice (garde des sceaux). In a large city there may be two Councils, one dealing with commercial employment, the other with industrial. In rural areas, there may be an agricultural council. Such a Council is composed of employers and employees, an equal number of each, all elected by their associates. If the president one year is an employer, the vice-president is a worker; and the following year it will be vice versa. In evenly divided votes, the local Justice of the Peace decides the issue.

b. Jurisdiction. The Council is concerned with individual disputes arising from labor contracts in commerce, industry, or agriculture, such as wage claims by employes, or claims by employers for breach of contract of employment. It does not handle cases arising in domestic or casual employment, and has nothing to do with workmen's compensation for personal injuries; these controversies are heard by Justice of the Peace or District Civil Courts. Neither is it concerned with disputes between labor unions and employers over collective bargaining agreements; these controversies must be submitted, since 1937, to special boards of conciliation and arbitration.

In localities where no Prudent Men's Council exists, case which would be decided by it go to the Justice of the Peace.

c. Appeal. Appeals from the decision of a Prudent Men's Council, in cases involving more than 1,500 francs, are taken to the District Court. In lesser cases, the Council's judgment can be attacked only in the Court of Cassation, on a charge of violation of law, or of *ultra vires* action.

7. Commerce Court (*tribunaux de commerce*).

a. Distribution; Composition. A second class of specialized tribunals are the Commerce Courts. There are 225 arrondissements whose commercial importance has warranted their establishment, which is accomplished, by presidential decree. In the other 161 arrondissements, the same work is done by the District Court. The Commerce Court is composed of an odd number of judges, elected for one year from among the merchants of the district. Women may not serve as judges but may vote. The judges-elect choose a president from among their own number.

b. Jurisdiction. Cases of indebtedness and contractual obligations arising from commercial transactions regularly come before the Commerce Court, as well as matters involving corporate or partnership organization. These are decided on the basis of the Commercial Code, of decrees and laws covering business transactions, and of local usage. If no Commercial Court has been established, commercial disputes must be decided by Justices of the Peace or the District Civil Courts, depending on the amount involved.

c. Appeal. Appeal from the Commerce Court can be carried to the appropriate Court of Appeals.

8. Military Tribunals (tribunaux militaires). The third group of specialized courts in the hierarchy headed by the Court of Cassation are the Military Tribunals.

a. Distribution; Composition. There is a military court for each military region and a naval court for each naval region. The bench is composed of comrades and superiors of the accused, including officers and non-commissioned officers. When an enlisted man was on trial, there had to be one non-commissioned officer included in the panel of judges, until Vichy suppressed this practice. The trial proceeds along lines similar to those of a regular trial in a civil court.

The regular military tribunals are to be distinguished from cours martiales, which proceed in disregard of legal guaranties and which were outlawed by Parliament during the first World War.

b. Jurisdiction. A Military Tribunal has jurisdiction over all service personnel within its region. It tries uniformed culprits for infractions not only of the Military Code but also, in wartime, of the civilian Criminal Code. It may also try civilians for espionage and treason; in localities where a "state of siege" exists, it may try them for all offenses which endanger the maintenance of order.

c. Appeal. Appeal from a Military Court can in peacetime be carried to the Court of Cassation. In time of war, appellate jurisdiction is exercised by special military courts of cassation.

9. Administrative Courts

a. Explanation. No feature of the French court system will be more confusing and yet more important for an Englishman or an American than the distinction between administrative courts and civil courts. The French administrative courts were established during the 1790's in order to free the Revolutionary Assembly from the restraint of the old *parlements*, which were distinctly royal and conservative in orientation. It was clearly an expedient to permit acts of the Government to be judged by courts friendly to the Government. As the French interpret Montesquieu's separation of powers in the government, it would be intolerable for the judicial arm to be able to annul acts of the legislative or executive branches. While this may appear to place the individual at the mercy of the state, the Frenchman has in fact had ample and prompt protection from unjustified acts by governmental officials. The administrative courts of the Third Republic conceived their role to be that of "the state's conscience."

b. Inter-department Prefectural Councils. The complaints of a citizen against what he feels to be excessive taxation would normally be brought first before an Inter-department Prefectural Council (Conseil de préfecture interdépartmental). The Councils also hear contract and tort claims involving the public works of the prefectures. There are twenty-two districts for these interdepartmental bodies. The Prefectural Council is composed of a president and four counsellors, all of whom are appointed from among departmental officials by the President of the Republic.

c. Council of State (conseil d'état).

i. Composition. The Disputes Section (assemblée de contentieux) of the Council of State is the supreme court of the French administrative law. It sits at Paris, in normal times, and has the same sphere of jurisdiction as the Court of Cassation: the whole French Empire. The Vice-President of the Council of State is ex-officio President of the Disputes Section. In addition, there are presidents of subsections and a varying number of ordinary councillors, all appointed and removed by decree of the President of the Republic.

ii. Jurisdiction. The cases which the Council of State hears cover a wide area and are of great importance. Considerable political importance is attached to the jurisdiction which it exercises in annulling the decrees and ordinances of the executive arm of government, where these officials have acted in excess of their power (excès de pouvoir) or, as America lawyers would say, ultra vires. Much more important in number of cases affected is the court's general jurisdiction of claims for misuse of power (détournement de pouvoir), or faults of administration (fautes de service). A merchant or contractor who would in the United States bring suit in the Court of Claims will in France present his request to the Council of States. So will a citizen who has been injured in an accident by government-operated automobile or locomotive. Since the French have adopted the theory that the government is responsible for the injuries it causes to its citizens, Frenchmen obtain relief in the Council of State which Englishmen or Americans cannot obtain in any tribunal.

During the first world war, Frenchmen who had damage claims against the British army were permitted to prosecute them in the Council of State courts as claims against the French government, which assumed liability under a guaranty of reimbursement from Great Britain.

10. Court of Conflicts (tribunal des conflits). The duality of the French court system makes it inevitable that disputes as to jurisdiction should sometimes arise between the administrative courts and the ordinary civil courts.

a. Composition. The Court of Conflicts is in the nature of an arbitral tribunal. It usually hears fewer than a half-dozen cases in any given year and is specially constituted for each separate case. The Minister of Justice presides. Under him are eight councillors, of whom three are from the

Council of State's Disputes Section, three from the Court of Cassation, and the other two elected by these six.

b. Jurisdiction. The Court of Conflicts decides any case in which a civil court has refused to relinquish jurisdiction to an administrative court. If a prefect feels that a case should come before a Prefectural council, but the District Court, for example, refuses to surrender the case, the Prefect may appeal to the Minister of Justice for the question to be settled by the Court of Conflicts.

11. High Court of Justice (haute cour de la justice). When the Senate sits in a judicial capacity it assumes the name of High Court of Justice. There are two grounds on which a case may be sent to be tried before the Senate. On the one hand, the rank of the accused may require it. The President of the Republic, for example, cannot be tried for any offense except before the High Court of Justice. In other cases, the jurisdiction of the High Court is coordinate with that of the Court of Assizes. It may try ministers for felonies in office and may try anyone for bearing arms against the state. In practice, the High Court is little used. In seventy years it has conducted three treason trials, one ministerial felony, and no presidential offenses. In a relationship somewhat like that of the houses of Congress in impeachment proceedings, the Chamber of Deputies serves as grand jury or accusation chamber in cases where the Senate serves as court. Until the Chamber acts, exclusive jurisdiction of political offenders other than the president remains in the ordinary courts.

2. Summary. Evaluating the court system of the Third Republic can best be done in terms of the opinions of the French themselves.

a. Criticisms. French writers on legal organization before 1940 have repeatedly cited the following faults in their country's judicial institutions:

(1) The procedure in civil claims is slow, complicated, and expensive. In many important aspects it dates back to the instructions to judges issued by Colbert in the seventeenth century. Some justified suits are never brought to hearing because the plaintiff is discouraged by the costs and waiting which confront him.

(2) The French jury is too susceptible to emotional considerations and has failed to assure a uniform application of the law in the Courts of Assizes. It is proverbial that a jury in France will be harsh, often too harsh in trying offenses against property, yet will be sentimentally lenient toward crimes of passion and political crimes. There have long been a number of French lawyers who demand the abolition of the trial jury in favor of a panel of judges as found in the other courts.

(3) The composition of the Commerce Courts places businessmen in the position of deciding cases in the light of the technical complexities of the Commercial Code. The phrase "judgment by peers" has been ridiculed with a paraphrase: "judgment by competitors." Many commercial interests have

been quoted as desiring Commerce Courts composed of disinterested lawyers in place of "merchants playing at judge."

b. Commendation. There are, on the other hand, several features which have been consistently praised by both French and visiting students:

(1) The conciliation proceeding, which demands that a Justice of the Peace be permitted to attempt an out-of-court settlement in any civil dispute, has appreciably lightened the burden on the courts and has saved countless disputants the cost of formal hearings.

(2) The handling of criminal cases is extremely swift and efficient. The accused can be, and usually is, brought to trial within a few days of the initiation of proceedings.

(3) The administrative courts offer prompt and fair redress at no charge for the citizen's grievances against the Government.

B. Vichy and the Courts

1. General. The government of Marshal Pétain has altered the framework of the old court system only slightly and in theory at least has destroyed no court nor legal institution of the Third Republic. It has been content with superimposing special courts and jurisdictions to implement the dictatorship and with suppressing the real function of some of the old courts. In addition to the existing courts and those it has created, Vichy has availed itself of extra-legal imprisonment. This so-called "administrative internment" is in fact a resurrection

of the sinister lettre de cachet of the pre-Revolutionary monarchy. According to a decree published 4 September 1940, individuals considered dangerous to the national defense can be arrested by order of the Prefect and imprisoned indefinitely without preliminary hearing.

2. Modifications in Previous System.

(1) The Council of State still has its Disputes Section. But there are no reports of cases annulling or even considering acts of Vichy officials as ultra vires, notwithstanding the disputable character of many of them. Apparently, the inhabitants of France recognize the futility of invoking the "state's conscience" at this time.

(2) The jury in the Court of Assizes is no longer allowed to deliberate in privacy. Instead, the jury and the judges now confer as a committee to determine both the facts of the case and the sentence to be imposed. Hence Vichy's control of the magistracy carries with it control over juries as well.

(3) The suspension of the Houses of Parliament has automatically dissolved the High Court of Justice, which consisted of these bodies.

3. Vichy Additions to Court System.

a. Supreme Court of Justice (cour suprême de la justice). In July 1940, only a few days after he assumed complete power, Marshal Pétain decreed the formation of the Supreme Court of Justice. He appointed five judges, provided the necessary secretariat, and assigned the Court a special prison for the execution of its sentences. The court sat at Riom. Its specific task was to try those ministers and their associates who were charged with having led France into war with Germany, and also to try some of these same men on charges of corruption and malfeasance in office. The trials, which involved, among other things, Messrs. Blum, Daladier, Mandel, and General Gamelin received a great amount of publicity which proved to be extremely unfortunate for Vichy. Blum, in particular, but also Daladier and the others, took advantage of the chance to speak from the stand; their comments amounted to a ringing denunciation of fascism and of many men high in the new Government. The Court has become a dangerous sounding board, and in the spring of 1942 Germany and Vichy agreed that the long-drawn proceedings should be suspended. Fourteen months later, in June 1943, a decree dissolved the Supreme Court of Justice, officially ending the Riom trials.

b. Council of Political Justice (conseil de la justice politique). The failure of the Riom Court was apparent almost from its first sessions. The Chief of State still lacked a direct and easily-controlled means for authorizing action against the highest political enemies of his regime. To provide this legalistic cloak, the Council of Political Justice was created in August 1941. The Council, which was made heir to the records assembled by the Supreme Court of Justice (then still in session), consults with the Marshal regarding sentences to be passed upon high officials who have held office within the ten years prior to August 1941. The composition and procedure of the Council have never been defined. Actually, it does not sit as a court nor does it exercise an independent judicial function. In the main it appears only to furnish support for executive orders; and under this arrangement Pétain has pronounced several life sentences against political figures of the Third Republic.

c. State Tribunal (tribunal d'état). A decree of September 1941 created the State Tribunal to try "all those actions liable to cause disorder, to bring about breaches of the peace, to disturb international relations or in any way be harmful to the French people." Such a vaguely defined jurisdiction obviously overlaps the provinces of several other courts. If the Government so chooses, a case may be lifted out of any other court, even while hearings are in progress, and assigned to the State Tribunal. The two divisions of the Tribunal, one sitting at Paris, the other at Lyon, have to date been occupied almost solely with the more serious black market offenses, especially ration card forgeries.

d. Special Criminal Court (cour criminelle spéciale). For a short period extending from March 1941 until November 1941, the Special Criminal Court tried black market and hoarding cases. After eight months of activity it was suppressed in favor of the State Tribunal.

e. Special Sections within Court of Appeals.

i. Court for Night Offenses (tribunal des infractions nocturnes). Created in May 1941, the Court for Night Offenses in each appeal district tries misdemeanors and felonies committed during the blackout. Its procedure is very rapid: trial must follow apprehension within eight days, and judgment must be delivered within ten days of the opening of proceedings. There is no appeal from its decisions, which are immediately enforceable.

ii. Sections to Try "Communists." Each Court of Appeals in the Occupied Zone, prior to November 1942, had a special section to hear cases involving actions by "Communists" and "anarchists," especially assaults upon German soldiers. In the former Unoccupied Zone, Military Tribunals were empowered to declare themselves Courts-Martial to hear the same category of cases. When the Germans occupied the rest of France the use of the special sections of the Courts of Appeals was made uniform for the entire country.

f. Court-Martial of Gannat (cour martiale de Gannat). A law of 24 September 1940 established the Court-Martial of Gannat to try de Gaulle accomplices and sympathizers both inside and outside France. It was suppressed in November 1941, after having passed a number of death sentences in absentia upon Free French leaders, including General de Gaulle himself. Apparently Vichy felt that in fourteen months the Gannat Court had achieved its purpose of outlawing Resistance leaders at home and abroad.

g. Special Courts-Martial (cours martiales spéciales). The most recent addition to Vichy's group of special courts is the crop of courts-martial which a decree issued in January 1944 empowered the Secretary-General for the Maintenance of Order (secrétaire général chargé du maintien de l'ordre) to create. A Court Martial is brought into being by the appointment of three judges to try acts of terrorism. It has no rules of procedure beyond its instructions from the Secretary-General. All existing laws are suspended in their application to its deliberations and its sentences are immediately enforceable, without appeal. The formation of this group of courts-martial was apparently another step in the ruthless program of increased suppression inaugurated by the new Secretary-General Darnand.

h. Summary. The policy of Vichy with regard to the courts has been to destroy the independence of the judiciary (see below "The Judges") and to establish certain puppet courts, but not to abolish the machinery of the Third Republic. Vichy has suppressed some of its own courts: the Supreme Court of Political Justice because its proceedings were proving embarrassing to the government, the Court-Martial of Gannat because it had served its purpose, and the Special Criminal Courts because their jurisdiction had become superfluous. Even so, considerable confusion still exists as to the clear line of jurisdiction in many cases. Apparently the choice of which court will try a case of opposition to the Germans or the Pétain regime rests largely with the Government itself. The State Tribunal, the special sections of the Courts of Appeals, and the drumhead courts-martial most recently set up, all have as their avowed purpose the suppression of political opposition to the government and acts of hostility toward the occupying forces. Even the Courts for Night Offenses, which would appear to be less political than the other, have instructions to consider the race and personal opinions of defendants when passing sentence upon them.

C. Problems of Reorganization

That there were weaknesses in the system under the Third Republic, as in any nation under any government, the French themselves would be the last to deny. But it would be difficult for an observer not a native of France to suggest features of the pre-war system which ought to be abolished or altered, nor are such recommendations necessary. The French have a clear set of theories regarding reforms of the courts, and the end of German domination will surely bring a number of changes, as for example, a simplification of procedure in civil suits.

As for the changes Vichy has made, an early abolition of the new courts is to be expected. A democratic administration has no need of a Council of Political Justice. Authorities with popular support need not employ extraordinary courts-martial. The special sections of the Courts of Appeals operate on a basis representing the worst in administrative domination of the judicial arm. (It is reported that no decision is reached in these sessions without first submitting the dossier to Vichy for instructions.) Even the State Tribunal and the Special Court for Night Offenses, while they may serve a necessary purpose in handling cases arising out of wartime conditions, carry a stigma of association with the Pétain Government and with Germany which all but eliminates their usefulness in a liberated France. The reaction of the populace would inevitably be bitter toward an attempt to continue in operation any tribunal established since June 1940. Even though the objectionable elements in the court personnel be purged in favor of truly republican judges, the very names of these Vichy courts would excite repugnance in the French people. It appears doubtful whether the High Court of Justice will be reconstituted immediately after the liberation, since that would require reassembling of the Chamber of Deputies and of the Senate in their pre-war functions.

The legal aspects of abolition of the Pétain regime's courts will be determined by what policy is adopted by the civil authorities with regard to the whole body of Vichy legislation. If there is a blanket annulment of all decrees of the Chief of State and of all directives of his ministers, then the new courts will be automatically dissolved. Their authorization for sitting will have vanished. If, on the other hand, the legislation since the Armistice is dealt with point by point, each of the Vichy courts will have to be removed by ad hoc action of the duly empowered French authorities. Whatever mechanical means are adopted, the abolition of fascist vestiges must be the immediate goal of any reform of justice. Until the Vichy machinery has been destroyed in fact and removed in form, it will be impossible for the Frenchman to believe that Freedom has returned to the courts of his land.

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III. THE JUDGES

A. Under the Third Republic

1. Non-professional Judges. Several French courts employ panels of men who perform the function of judging disputes, but who do not make this their profession, nor possess any specialized training for it. The Prudent Men's Councils are composed of employers and employees in industry, commerce, or agriculture. The Commerce Courts are made up of business men. Army and navy personnel sit in the Military Tribunals.

While there is no pronounced distrust of non-professional judges, they have not commanded the high respect of the professional judiciary. The commercial judges have been charged with deciding cases according to the recommendations of chambers of commerce rather than according to legal principles. There is a considerable opposition among Frenchmen to military judges, and their jurisdiction was considerably curtailed by the new military code of 1928. When workmen's compensation laws were enacted, their administration was entrusted first to the District Civil Courts and later to the Justices of the Peace, rather than to the Prudent Men's Councils.

The membership of the Council of State is partly composed of qualified lawyers, and partly of non-professionals. The law members must pass a difficult qualifying examination. The decisions of the Council have set a high standard of judicial statesmanship and have won for it a high degree of public esteem.

2. Justices of the Peace. At the birth of the Third Republic, the Justices of the Peace held a position in the public regard comparable to that of the corresponding officials in the United States. Most of them had no knowledge or training in legal principles. They were removable at will by the Minister of Justice and were consequently subject to political influence.

Since 1870, the Justices have climbed steadily in terms of responsibility and popular respect. Under successive changes in the law, culminating in 1926, new appointees must now be nearly as well qualified as the judges of the District Courts. They must be legally trained, have two years' professional experience, and pass a special examination for their position. Although their salaries are still low, their tenure of office is substantially secure during good behavior. They appear in court with judicial robes and deliver written judgments like the judges of the higher courts, some of which are published in reports.

Accompanying an augmentation of the dignity of Justices, there have been gradual accessions to their jurisdiction. Not only have the monetary limits of their competence been increased to keep step with the depreciation of the franc, but many special subject matters have also been directed to their courts. In 1938, they were given cognizance of workmen's compensation and social security claims. Adequate review of their decisions was assured by entrusting it, with other matters of special significance, to the new Social Chamber of the Court of Cassation.

3. The Higher Judiciary. The judges of the magistracy constitute the real core of the French judiciary. Called the "seated magistracy" (magistrature assise), as opposed to the "standing magistracy" (magistrature debout) -- which includes the active lawyers of the Public Ministry -- these higher judges possess both education and a high degree of group integration. The seated magistracy is composed of:

1. District Court judges.
2. Court of Appeals judges.
3. Court of Assizes judges (drawn from (1) and (2)).
4. Court of Cassation presidents and councillors.

Since the magistracy is a profession, an organization with rules and traditions, it is the most significant portion of the judiciary. It is articulate, and the voice of the "judges" has, on occasion, been a significant force in the government. When a French writer mentions the magistracy, he means the superior judiciary unless the term is specifically broadened to include the Justices of the Peace and the personnel of non-professional categories. Thus the French magistrats, who stand at the top of their judicial hierarchy, are the opposite of American "magistrates," who stand at the bottom of theirs.

a. Requirements for Entrance. The French law student makes a choice at the very beginning of his career between a career in the magistracy or a private practice. If he decides to try for the magistracy, he must first obtain his certificate in law (licence en droit) at the completion of a three-year course. Then he spends two years apprenticed to one of the advocates at a Court of Appeals. This training period completed, he may take the entrance examination for the magistracy. From the results of this examination additions are made to the list of eligibles for appointment to the bench. Once his name is inscribed upon this list, the aspirant is on the threshold of actual appointment to the position of subordinate judge of a District Court.

b. Promotion. Once established, the judge is secure for life unless convicted on a criminal charge. The only discipline to which he is subject is at the hands of the Court of Cassation, sitting as a supreme court of the magistracy. He is, however, poorly paid by British or American standards, nor does his income compare favorably with that of a French lawyer with a good private practice. Therein lies the chief limitation on the judge's theoretical independence. In order to reach the higher income grades he must remain in favor with the Minister of Justice. Promotions are made from a list of eligibles prepared by a selection committee drawn from the Court of Cassation. But it is still the Minister of Justice who chooses those to be promoted from among the names on the list. Consequently, a judge cannot hope to rise from a District Court to a place on a Court of Appeals, much less reach the coveted heights of the Court of Cassation, unless he holds the good will of the Minister.

c. Social Position. The French judge moves in an atmosphere of convention and etiquette which surrounds his position with great social prestige. In court his robes and his stiff, flaring toque symbolize the deference accorded him by the rest of the legal profession on the one hand and other government officials on the other. A good example of judicial etiquette is the formal exchange of courtesy calls which accompanies the judges' arrival in a town for a session of a Court of Assizes. Formality and professional discipline are the outstanding characteristics of the magistracy as a body.

B. Judges under Vichy

1. Initial Removals. The Pétain regime began its assault upon the independence of the magistracy within a few days after the Marshal assumed unlimited power on 10 July 1940. Large numbers of judges have been dismissed and many of these were also arrested. Some of these men were Jews, others were Free Masons, others were suspected of Communistic, pro-British, or Gaullist sympathies.

2. Replacements. Finding substitutes for all those magistrates who were ousted would have been impossible under the normal procedure for appointment and promotion. As a result, the standards have been relaxed until now a judge who is recognized for his docility to Vichy directives can be promoted without even being on the list of eligibles. While it is not true that there has been anything like a complete overturn of the magistracy in favor of pro-Vichy judges, it is certain that all of the newer appointees hold political views which make them useful cogs in a totalitarian regime.

3. Subordination to Instructions. The judges have been repeatedly informed that judgment is no longer simply a matter of

the facts and a just decision. The security of the State must transcend either of those considerations. The Chief of State issues memoranda to the courts and has further instructed them to abide by directives from the various ministers of the Cabinet. In some cases no judgment can be rendered until the dossiers have been submitted to Vichy and instructions as to punishment issued by the Government. Offenses involving Germans must be judged "for policy reasons, with due regard for the nationality of the parties." If the Government orders a case transferred to a German military court or, for example, to the State Tribunal, the ordinary court must accede with as good grace as possible.

4. Instances of Defiance. Some of the judges have clung staunchly to republican views, to the point of bringing about their own dismissal, which inevitably carries with it the threat of further punishment. M. Paul Didier is an example. On 3 September 1941, at a meeting of the magistracy of the Paris region, called for the purpose by the Minister of Justice, Didier refused to swear allegiance to Marshal Pétain. A decree promptly deprived him of his seat on the Paris Court of Appeals. There has been a recurring tendency on the part of many of the courts to pass lighter sentences upon political prisoners and captured members of the Underground than Vichy finds pleasing. The controlled press has frequently castigated the magistrates for leniency and has often succeeded in obtaining harsher judgment. The Underground, on the other hand, has

assassinated judges who seemed to be following orders of the Government with too much enthusiasm.

C. Restoration

Eradicating the controls over the judges themselves is obviously necessary to remove the traces of tyranny from the court system as a whole. To dissolve the Vichy courts will not restore republican justice to the citizens. They will be watching to see that collaborationist appointees among the magistracy are ousted and to be assured that judges who kept faith with the ideals of an independent judiciary are reinstated.

The members of the French magistracy are conscious of a distinct esprit de corps. The records of the professional body will make easier the task of evaluating individual judges. The praise or censure of their own colleagues will be an important criterion in sorting out the collaborationists. But equally important will be the opinion of the populace in general. The judges of a restored republic will have to hold the respect of the citizens they judge; and only men who have not pandered to the occupation authorities can hope to merit that respect.

IV. LEGAL PROFESSION

A. Organization

In America, the legal profession means the bench and the bar, of which the bar is a diverse group including government lawyers and private lawyers, trial lawyers and office lawyers, practising lawyers and lawyers employed in business or public administration.

In France, the division is completely different. The legal profession is divided into the magistracy (magistrature) and the auxiliaries (auxiliaries). The magistracy are those members of the profession in public office -- not only the judges, but also the attorneys-general, the district attorneys, and their staffs. The judges, or "bench" in American parlance, are called the "seated magistracy" (magistrature assise). The government lawyers are called the "standing magistracy" (magistrature debout), or the "parquet." This latter word means literally the floor of the court, between the raised dais of the judge in front and the raised seats of the spectators behind, where these lawyers formerly stood in the conduct of a case. Similarly, American lawyers are called the "bar" because they traditionally stand just before the "bar" which separated the judge from the rest of the courtroom. The remainder of the legal profession, who belong to neither branch of the magistracy, are the "auxiliaries." They include all the various kinds of private legal practitioners, and also the clerk and the process-server (greffier and huissier) of the court. Only one small segment of these auxiliaries is called the "bar" (barreau).

1. The Parquet. The parquet corresponds in function to our attorney-general's and district attorney's offices. Each District Court has its parquet headed by the District Attorney (procureur de la République), and staffed with his Assistants (substituts). Above these are the Courts of Appeal, each with its Attorney-General (procureur-général) and his Advocates-General (avocats-généraux). The highest parquet is attached to the Court of Cassation, where there are also an Attorney-General and Advocates-General.

But the differences between the parquet and the corresponding American offices are more important than their likenesses. The first is that suggested by one of the parquet's names - the "standing magistracy." The members of the parquet are on a par with the judges; members of the standing magistracy, or parquet, are frequently transferred to positions in the seated magistracy, or bench, and may in due course be transferred back again. Both bench and parquet are under the Minister of Justice, who awards promotions in both branches. The tenure of judges, and the requirement of selecting candidates for promotion from a recommended panel do not apply to positions in the parquet, but the practical differences in promotion or demotion are not great. The nearly judicial standing of the parquet is emphasized at court sittings, for a member of the parquet sits with the judges, occupying the seat at the extreme right of the bench, as seen from the courtroom.

The other important difference between the parquet and American government lawyers is suggested by a third name which is applied to it -- the public ministry (*ministère public*). This is a deceptive name, since it suggests that the parquet is a department of the national government, like the ministry of labor. On the contrary, the parquet is a group of people within a department - the Ministry of Justice. But the name of "public ministry" serves to emphasize the fact that the parquet is a career of public service, wholly separate from the private practice of law. A private lawyer does not run for District Attorney, serve a short term, and retire to private practice for ten years until he is ready to run for Judge. Once he has entered private practice, he can never enter the parquet except by withdrawing entirely from practice, and starting as a novice at the botton of the parquet. And a member of the parquet cannot lightly step out and begin the practice of law. He does not even belong to the same profession. A civil servant he is and must remain, and his only hopes of progress are upward through the parquet, or to the bench.

2. *Advocates* (*the "Bar"*)

a. *Functions of Advocates*. The one small group of men in the French legal profession who are properly called members of the "bar" are the advocates, and it is to this group that travelers who report on the French bar usually devote their attention.

The work of a member of the bar of the District and Appeals Courts has only a fraction of the scope of an American lawyer's; it is even more restricted than an English barrister's. Such an advocate's work is simply advocacy -- making oral arguments (plaidoiries) for his client before the judges. He does not necessarily advise his client whether to sue or not to sue; that may have been decided by the solicitor, who alone can institute suit in the Civil Tribunal. He does not "represent" his client in the sense of receiving service of papers, or filing those documents which determine how the case will be defended, nor does he draw these documents. As a consequence, the advocate has little need of an office; he maintains a reception room at his home, but spends nearly all day at the courthouse, like a busy American trial lawyer in term time. Even at the hearing, the advocate does not "try" the case like an American trial lawyer, or English barrister, since examination of witnesses does not usually take place at the hearing; if it does, it is conducted by the presiding judge. In criminal matters, however, where a solicitor is not required, the advocate plays an important role as counselor, as he may also in some civil cases.

b. Position of the Bar. The reputation and dignity of the French barristers depends primarily upon their excellence in oral argument. Most of it is directed to the judges, as in American appellate courts. But in the Court of Assizes, where felonies are tried, impassioned appeals to the sympathy of jurymen recall the drama of an American courtroom. The same talents of persuasion which make French advocates successful in their profession tend to make them successful in the political field. It is from the advocates that France's many lawyer-statesmen have come. In the courtroom the advocate is a distinguished figure, wearing a black robe and tocque similar to that of the judges, with the addition of a sash or "hood," trimmed with two rows of ermine, hanging from the left shoulder.

A discipline far more exacting than that of any American bar, and perhaps more than that of the English barristers, is maintained by the bars of the respective courts. Admittance to the bar is granted only after receipt of a law diploma and completion of a stiff examination. Once a member of the bar, the advocate is precluded from supplementing his income through any other trade or business, and even from forming any partnership with another advocate. He may, however, enter politics. The most serious accusation made against the bar of the Republic involves the use of political influence on judges by a few lawyer-politicians. Proposals have been advanced for separating the practice of law from politics.

The bar of the district courts and the courts of appeal is distinguished from all other branches of the legal profession in that it can be entered by anyone who can pass the necessary examinations. It contrasts with the magistracy on the one hand, where admittance is obtained only through an appointment by the Minister of Justice, and on the other hand with other branches of the legal profession, where the aspirant must buy the office or practice of a previous holder. The venality of office applies also to the bars of Court of Cassation and of the Council of State, although not to the bars of the lower courts.

3. Solicitors. The lawyers who do much of the formal work which engrosses an American lawyer engaged in litigation are the solicitors (avoués.) It is they who technically "represent" their clients, filing suits or defenses to suits, and preparing the formal written statements which correspond to the "pleadings" of common law courts. Only the making of oral arguments in court is left to the advocates.

The solicitors, like the advocates, have their local organizations to verify the qualifications of their members, but their requirements are far less strict. An applicant must have attended certain law courses but need not have obtained a diploma. He obtains his practice by buying it from a predecessor, since the number of members is limited. This fact gives a sort of monopoly to solicitors, since litigants in the District Courts and the Courts of Appeal have no choice but to be represented by a client who is not introduced by a solicitor, a solicitor must be retained if the case is litigated in the District Civil Court, or the Court of Appeal. A solicitor is, therefore, likely to be the first person consulted, and to advise extensively; while an advocate may not be retained at all, if the case is settled before hearing.

Outside the District Courts and the Courts of Appeal, the solicitors have little practice. Neither solicitors nor advocates are required in the Justice of the Peace courts, the Prudent Men's Councils or the Commerce Courts. In the administrative courts and in the Court of Cassation, there are no solicitors, since the advocates perform the functions of both written and oral representation. As the jurisdictions of the Justice of the Peace courts and administrative tribunals expand, the solicitors handle a smaller and smaller proportion of all legal business. At the same time, procedural reforms are reducing the importance of formal pleadings even in the courts where solicitors are required. Some French critics, therefore, consider the solicitor an anachronism.

4. Commercial Lawyers. In the commerce courts, representation is not required, either by solicitors or by advocates, although both may take cases there. A group of practitioners has grown up, however, who are registered with the courts and have an association for disciplinary and other purposes. These are the commercial lawyers (agréés). They are not required to be learned in the law, and are hardly "lawyers" at all, but the work they do would be done largely by commercial lawyers or perhaps collection agencies in the United States.

5. Notaries. The French notary (notaire) plays a vastly more important role than his American counterpart. Like the latter, he holds a license from the government to exercise his provision, and he is needed to certify the execution of certain types of deeds and contracts. But he does not merely certify signatures. He drafts the deed or contract, and assures himself that the signer understands and assents to all its provisions

He sees that the necessary stamp taxes and transfer taxes are paid, and that the document is properly filed in official records. The totality of his services are comparable to those of an English conveyancer, or of an American lawyer specializing in real estate or corporation practice, and his fees are substantial. The number of notaries, like the number of solicitors, is limited. Since they have a legal monopoly in the preparation of certain types of documents, many notaries earn large incomes. Although the formal requirements for entering the notarial profession are lower than for advocates, many notaries are men of high professional attainments.

6. Consultants. Since the French legal profession is broken up into so many segments, hardly any one is in a position to advise broadly on a problem having many aspects. The advocate is undoubtedly regarded as the most reliable source of counsel, but he is not allowed to draw contracts or deeds (these being functions of the notary), nor pleadings for litigation (the prerogative of the solicitor). The solicitors and notaries likewise tend to have practices restricted to the particular functions they are licensed to perform.

Under these circumstances a profession of "consultants" (conseillers) has developed, simply to advise. These men are registered on no roll, have no disciplinary associations, and vary from individuals of very little importance to some with large and lucrative practices. Generally speaking, they have no formal legal training. They are frequently designated "financial consultants," "commercial consultants," and the like.

Collectively, they are sometimes called "men of affairs" (hommes d'affaires). There does not seem to have been, as in the United States, any movement to treat these advising laymen as unauthorized practitioners of the law.

7. Court Clerks. It is probably shocking to most Americans to find a court clerk described among the private practitioners of the law. Although there is generally a small salary attached to the office, a more important part of its emoluments come from the fees paid by litigants who file documents. A somewhat similar fee system persists in some American jurisdictions. What characterizes the clerk most distinctly as a practitioner rather than a public servant is that he buys his office from a predecessor, like the solicitor or notary, rather than receiving it by election or appointment. No legal training is required, although an examination must be passed.

The duties of the clerk are to attend court and make minutes of the proceedings (there is no stenographic record). There are also several occasions, principally in criminal procedure, where a judge leaves the court room to observe the scene of a crime, or to interrogate witnesses, or where a judge interrogates witnesses in chambers. Here again, the clerk takes minutes.

8. Bailiffs. The service of formal notices, summons, and arrests devolves in France upon the bailiff (huissier). Unlike sheriffs and constables, who perform similar functions in American courts, he is not a peace officer. He mixes the

functions of a tipstave and court crier within the court with functions of a process-server outside. In fact, his French designation (cognate with "Usher") suggests that his indoor functions were originally the more important. He too buys his office, which may be quite lucrative in the larger courts.

B. Effects of Vichy on the Legal Profession

1. Formal Attacks. The Vichy government has had severe effects upon the legal profession. It ordered the exclusion from the professions of Jews, Freemasons, and foreign-born practitioners. Conversely, it restored to membership in the Paris bar at least one advocate who had been expelled in 1937 for anti-Semitism.

At the same time, Vichy laws reduced the legal requirements for admittance to the French bar, permitting, among other things, the substitution of war service for formal training. It also permitted solicitors to present arguments in criminal cases - a function formerly reserved, with few exceptions, for advocates.

Finally, a sweeping series of laws and decrees issuing from the chief of state reorganized the professional associations of the solicitors, commercial lawyers, notaries, clerks, and bailiffs. The precise effect of the new decrees is not readily discernible, but the new organizations appear to be more tightly organized, with more direct responsibility to their higher officers and to the state.

2. Undermining the Profession. But the most profound effects of Vichy upon the legal profession have not resulted

from these formal attacks. They have flowed from the undermining of the administration of justice. All property is insecure because of public disorder, and because all of it is likely to be seized for real or imaginary offenses against the government by dealing in black markets or aiding the underground. Consequently, there is little reason for ordinary civil suits and civil practice has shrunk tremendously. For a time there was a tremendous growth in criminal practice, but the creation of extraordinary courts which give no time for defense has probably made criminal defense equally futile. Certainly this must be true since the widespread resort to courts martial. Even before this procedure, the right to choose one's own counsel had been taken from persons accused (though not yet convicted) of communist or anarchist activities.

Vichy justice has left no place for the functioning of private lawyers. As for the government lawyers of the parquet, their ranks have been subjected to the same sort of purging of democrats which has run through the judiciary and the entire civil service.

C. Problems of the Liberation.

Since re-occupation naturally aims at the restoration of normal civil and criminal processes, and these can function only through the legal profession, the restoration of the profession to a healthy state will be an early objective of any liberation movement. To some extent, restoration of law and order will automatically permit members of the legal professions to resume their normal pursuits. But restoration of those who have been arbitrarily expelled from the associations should follow almost immediately, not only for the correction of personal injustices, but also to restore to the profession many of its most patriotic members.

A more delicate question will be presented with respect to those members who have been admitted to the profession during the Vichy regime. Where they have been admitted for specific purposes at German instigation, the problem is one of the treatment of collaborationists, and need not be touched here. In the case of ordinary citizens who have qualified in the usual way, their admittance should probably be confirmed by act of the proper court or professional organization. In the case of ordinary citizens who have qualified in the usual way, their admittance should probably be confirmed by act of the proper court or professional organization. In the case of citizens who have been admitted under relaxed requirements, the balance between permissible sympathy for men whose training was interrupted by the war, and a desire to maintain professional standards, is probably best left to the professional organizations themselves.

The problem of the reorganization of professional organizations, other than that of the advocates, is difficult to evaluate. Commentators before the war left little doubt that discipline and organization were somewhat lax in these groups. Although the more centralized organization was doubtless useful to a collaborationist government which wished to tamper with personnel, it might also be a sound organization for self-discipline in a period of restored national freedom. On the whole it would seem wise to let the reorganized organizations continue in their present form (possibly after permitting new appointments or elections of officers), unless they themselves recommend a return to their former status.

V. FRENCH CRIMINAL JUSTICE

A. Steps in Prosecution and Punishment

As in the United States, officers of the police are relied on to apprehend criminals and bring them before the authorities of justice. But from this point, nearly every part of the procedure differs significantly from the corresponding American process.

1. Preliminary Hearing. The American procedure of bringing every arrested suspect before the Police Court or Justice of the Peace is not followed in France. Only the pettiest offenses can be handled in this way. Consequently, it is necessary to determine before the suspect is brought before any judge the grade of offense for which he is to be prosecuted. Usually the District Attorney steps in at this point and directs the course of prosecution.

a. Grades of Offenses.

i. Felonies (Crimes) French law, like British and American, recognizes a separate class of infractions made up of such violent offenses as murder, mayhem, robbery, and burglary, together with other offenses which merit equally severe punishment. Five years' imprisonment, or more, marks the line of demarcation of these violations of law, which correspond in a general way to "felonies" in the common law system. In French they are called crimes, and that term is never applied to offenses of a lesser grade.

The proper French word to designate all grades of public wrongs is the same as the English -- offenses.

ii. Misdemeanors (délits) Next below the felonies, the French recognize a grade of offenses much like the "misdemeanors" of American law. They are called délits -- an unfortunate word because it is sometimes used to signify all offenses against the state, and in another connection to signify private wrongs against individuals, like the English word "torts." But in its stricter connotation the French "misdemeanor" excludes felonies and also the lowest grade of offenses, called "contraventions." Typical misdemeanors are assault and battery, or theft, when not aggravated by additional circumstances. But theft by force of arms or by breaking into a building at night, is a felony.

iii. Contraventions. The lowest grade of offenses against the state is one for which no name exists in the English common law, although the need for a separate category has often been noted. These offenses are called "contraventions." Any offense for which the penalty cannot exceed fifteen francs or five day's imprisonment falls in the contravention category. Most contraventions consist in maintaining nuisances, blocking the highways, and the like.

b. Direct Citation for Trial. If the offender is accused only of a contravention, he will be sent directly to the Police Court (tribunal simple de police), where he will be fined a few francs or jailed for not over five days. This is much like the summary jurisdiction exercised in America by Justices of the Peace, except that the penalties which can be summarily imposed are much lighter.

If the suspect is accused of a misdemeanor, he does not go to the Police Court at all. When the misdemeanor is a minor one, and the proof so clear that further investigation is unnecessary, the District Attorney will normally cite the case directly to the District Criminal Court (tribunal correctionnel) for trial. This court may sentence the offender to as much as five years' imprisonment. Yet it may proceed without any preliminary hearing having been held or any official investigation of the proof of guilt prior to trial. It employs no jury and frequently hears no witnesses except the accused himself, proceeding on the minutes of investigation (procès verbaux) prepared by the police or District Attorney. If there is any other inquiry into the proof of guilt, it is merely an unofficial inquest (enquête officieuse) made by the District Attorney before citing the case for trial.

c. Examining Judge (Juge d'Instruction). The procedure of a preliminary hearing is reserved in French law for felonies and for misdemeanors of more than usual gravity or complexity. These cases are ordinarily referred by the District Attorney to the Examining Judge. In cases where the offender is apprehended either in the offense or very shortly afterward, the offense is then said to be a crime flagrant, or délit flagrant.

The French preliminary hearing is a substantially different thing from the American. The Examining Judge is not a Justice of the Peace, but a member of the bench of the District Court or of the parquet. Unlike a common law Justice, he does not confine himself to determining whether the evidence presented constitutes "reasonable and probable cause" for holding the defendant. He has no obligation to dismiss him if it does not. On the contrary, it is his business to launch an investigation of his own into the probable guilt of the accused and to hold him during the time necessary to complete the investigation.

On completing his inquiry, the Examining Judge refers the case directly to the District Court for trial, if a misdemeanor is indicated, or to the Chamber of Accusation, for further investigation and review, if the evidence points to guilt of a felony. The latter alternative may be compared with "binding over" to the grand jury by an American Justice of the Peace.

2. Indictment: the Accusation Chamber (chambre des mises en accusation)

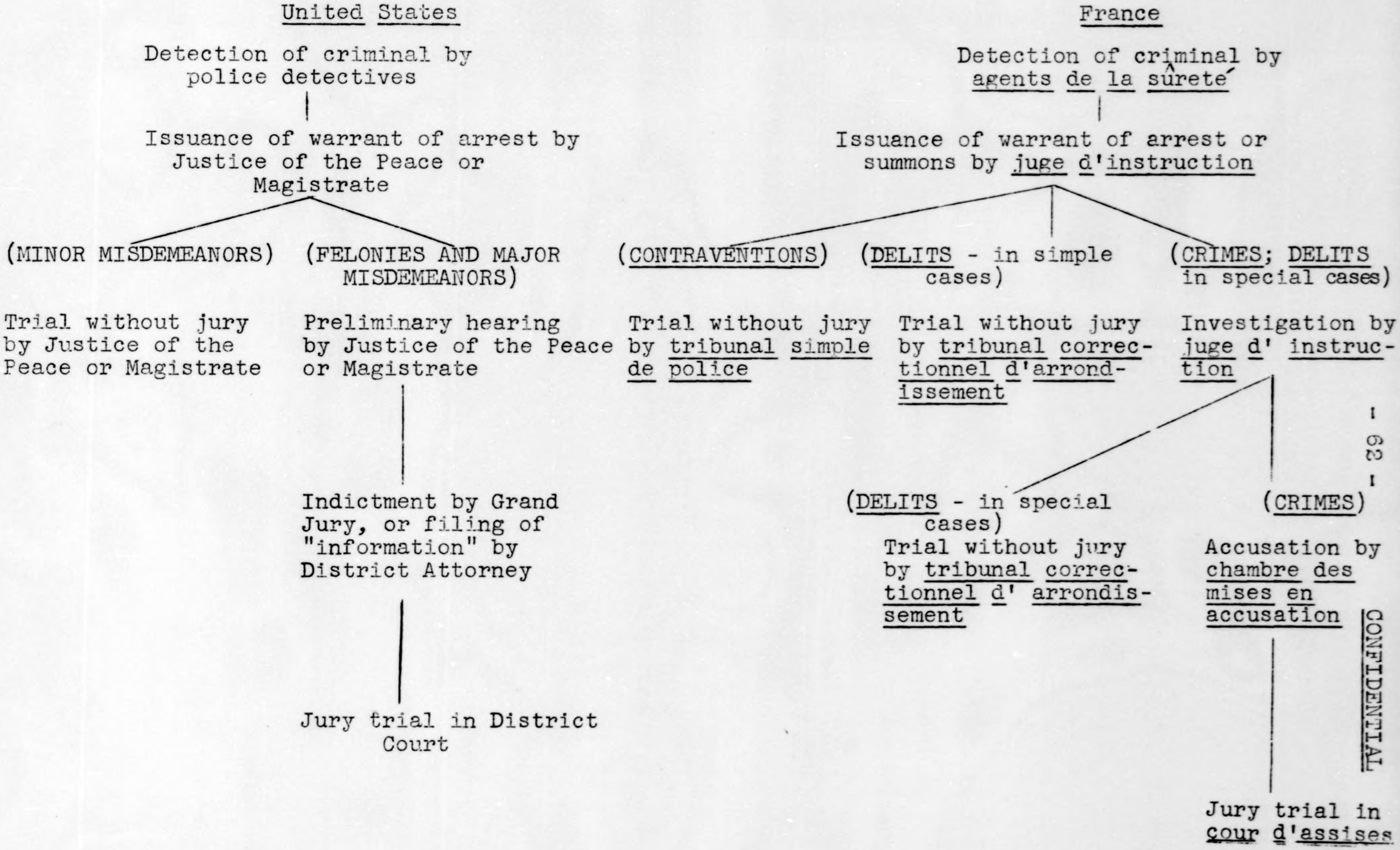
The Accusation Chamber is the nearest correlative in French criminal procedure to the common law Grand Jury. After a short experiment with a grand jury of laymen during the Revolutionary period, the French abandoned it and returned to professional judges. The high judicial rank of its members is striking, since the presiding Judge must be a member of the Court of Appeal for the region and the two associate judges may come either from the same court or from the District Court.

Like the common law grand jury, the Accusation Chamber decides whether the evidence is sufficient to merit a trial and makes the formal charge or indictment on which the accused is tried. It also has powers of investigation, although it generally finds that much of the work has already been done by the District Attorney in his unofficial inquest, or by the Examining Judge, who is definitely charged with that duty. If the Accusation Chamber finds evidence of felony meriting a trial, it forwards its indictment to the Court of Assizes; otherwise it may relegate the case to trial in the District Court (for misdemeanors) or Police Court (for contraventions), or may dismiss it entirely.

3. Chart. A chart is attached, summarizing the typical steps of French procedure leading to trial with a comparison of the commonest elements of procedure in the United States. It is of course highly simplified, and ignores possible variations in practice.

CHART OF TYPICAL PROSECUTION OF CRIME IN FRANCE

AND IN THE UNITED STATES



United States

- Detection of criminal by police detectives
  - Issuance of warrant of arrest by Justice of the Peace or Magistrate
    - (MINOR MISDEMEANORS)
      - Trial without jury by Justice of the Peace or Magistrate
    - (FELONIES AND MAJOR MISDEMEANORS)
      - Preliminary hearing by Justice of the Peace or Magistrate
        - Indictment by Grand Jury, or filing of "information" by District Attorney
          - Jury trial in District Court

France

- Detection of criminal by agents de la sûreté
  - Issuance of warrant of arrest or summons by juge d'instruction
    - (CONTRAVENTIONS)
      - Trial without jury by tribunal simple de police
    - (DELITS - in simple cases)
      - Trial without jury by tribunal correctionnel d'arrondissement
    - (CRIMES; DELITS in special cases)
      - Investigation by juge d' instruction
        - (DELITS - in special cases)
          - Trial without jury by tribunal correctionnel d' arrondissement
        - (CRIMES)
          - Accusation by chambre des mises en accusation
            - Jury trial in cour d'assises

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4. Trials for Criminal Offenses.

a. Inquisitorial and Accusatorial Procedure. American observers of French criminal trials nearly always characterize them as "inquisitorial." If the characterization were correct, it would mean that the court's function is "inquiring" - investigating to find out who committed the crime in question. The court would take the initiative and would be prosecutor as well as judge. That is what the ecclesiastical courts of the Middle Ages did in their "inquisitions" and the procedure found its way into French jurisprudence through the church. An American "coroner's inquest" operates on the inquisitorial principle (although it does not finally adjudge guilt), and so does a grand jury investigation.

At the other pole from "inquisitorial" procedure is "accusatorial," which English and American courts follow. They do not investigate or inquire; they sit as impartial umpires, while the state makes its case against the accused, and his own counsel tries to rebut it. Seldom does the judge interpose a question, although it may seem to an unaccustomed observer that the case is going to seed in the hands of opposing attorneys, neither of whom is throwing any light upon the facts.

b. Function of the Court in French Criminal Trials. The French do not call their procedure "inquisitorial," but "mixed," -- partly inquisitorial and partly accusatorial.

They point to the fact that the state is represented not by the judges, but by the District Attorney or Attorney General, who attends in person or by representative and does not participate in the decision. Moreover, the facts showing guilt are not arranged and organized by the judges who preside at trial, but have been assembled by the Examining Judge or Chamber of Accusations at an earlier stage of the proceedings.

The question of guilt in the Court of Assizes is decided by the jury, who do not participate at all in the prosecution of the case.

There are, however, decided inquisitorial elements in the French procedure. The preliminary hearing, of course, is wholly and frankly inquisitorial, rather than accusatorial as in common law countries. At the trial, the presence of a state's attorney is rather formally than actually significant, since he takes very little part in the proceedings. The presiding judge reads the evidence of guilt, questions the witnesses, and demands explanations of the accused. English and American observers are often shocked by the manner in which he seems to charge the defendant with guilt, and defy him to prove his innocence.

c. Function of the Jury in French Criminal Trials. Only in the most grave offenses -- felonies -- does the jury play any part at all. Contraventions are tried by a single judge, and misdemeanors by three judges, without the aid of a jury.

But in felony trials the jury is the finder of the facts. The trial revolves, as in a common law country, around the jury's psychology. The trial is spectacular, the courtroom often crowded, and the case, if sensational, is luridly relayed by the press to the public. Advocacy attains the same heights of comedy and bathos as in the United States.

Although the jury was copied from the English institution in Revolutionary times, it was taken without what Englishmen would consider one of its safeguards -- the rules of evidence. Evidence which would be considered "hearsay" at common law is not excluded. For example, the minutes of the Examining Judges's investigation, are read to the jury, thus repeating statements made by witnesses at another time and place. No objections to testimony may be made on the ground that it is "irrelevant and immaterial." The Presiding Judge asks whatever questions he wishes. Moreover, the jury are entitled to hear all matters of aggravation, (such as the defendant's police record), and of extenuation (such as the defendant's previous good character), since they advise the judges in the matter of sentence.

French juries are notoriously sympathetic to crimes of passion -- especially murders and deadly assaults provoked by seduction or infidelity. A defendant who drew from a District Court a heavy sentence for the misdemeanor of assaulting an indiscreet wife (while he might have been acquitted had he been tried by a jury for killing her) is said to have remarked, "That's what you get for being too gentle." Indulgence is also frequent in case of political assassinations, if the jury is persuaded that the criminal was impelled by a deep inner conviction.

d. Civil Party in a Criminal Trial. The French have an interesting device for killing two birds with one stone by means of their "civil party" procedure. A theft or an assault is obviously subject to two different legal attacks - one by the state, on account of the crime committed, and one by the victim, who wants to be paid his damages. The common law obliges the victim to bring his own independent suit for damages. It gives him no opportunity to get his personal justice in the criminal proceeding, and holds that he is guilty of "compounding" a crime if he takes payment in lieu of instituting a prosecution. The French permit him to join his claim to the state's prosecution, and dispose of the two matters at once. If the state does not institute a criminal prosecution, he may himself institute it, on the state's behalf. In either case, he makes himself a "civil party" in the case.

This device has been much admired by English and American commentators for its ingenuity and efficiency. In fact, it is not so foreign to the common law as might be supposed, since it has been shown that civil and criminal proceedings for assault were commonly combined in England prior to 1697, and that this combination explains some of the anomalies of the modern law of assault and battery. The procedure has been under considerable attack in recent years from French writers. Unfortunately, the "civil party" becomes the dominant force in the state's case. He is then in a position to extort an excessive settlement from the defendant as the price of dropping the entire proceeding. When the plaintiff has thus been satisfied, it is difficult for the state to get a conviction for the crime. In other words, the "civil party" procedure increases the opportunity for the practice of "compounding" crimes.

5. Appeals. French lawyers distinguish sharply between two kinds of appeals. The appeal on the merits (appel) brings all the facts and the law before the higher court for review. This is like the historic equity appeal of English law. The appeal on the law (pourvoi) is more like a common law writ or error, since it permits no review of the facts. In practice, it is even narrower than this common law writ, since exceptions cannot be taken in France to the admission or exclusion of testimony on grounds of irrelevancy or prejudicial character.

Appeals on the merits can be taken from the judgments of police courts (above a certain minimum) to district courts, and from the original decisions of district courts to courts of appeal. But appeals from the courts of appeal, and from the court of assizes (which enjoys the same standing) go to the Court of Cassation, which hears only appeals on the law.

Appeal on a point of law is a matter of right in criminal cases. The Court of Cassation does not "screen" these cases, as it does its civil appeals, through the Chamber of Requests.

6. Penalities. The scale of punishment is on the whole more severe in France than in England or America. Penalties are intended to deter by their rigor anyone who is contemplating a career of crime -- a feature signalized by the persistence of public guillotining for capital offenses. "Mercy" methods such as execution by electricity or gas have found no reception in France.

Moreover, the more serious felonies not capitally punished are penalized by transportation to the colonies and "forced labor." This does not mean prison industries but digging or pounding stone, frequently with solitary confinement, and manacling. In many cases there is an enforced period of exile to the colonies, in addition to other penalties. There are also detailed provisions with regard to the loss of civil rights.

7. Rights of the Accused. American and English observers have frequently commented on the abridgments of the rights of criminal suspects under French justice. A detailed comparison is called for.

a. Rights which are Guaranteed.

i. Ex Post Facto Laws. The French law, like the common law, recognizes the right of every man to suffer no penalty which was not provided by law at the time the crime was committed. This right is guaranteed by the penal code, and is usually associated with the maxim nulla poena sine lege -- no penalty except by law. By codification, which rendered the criminal laws available to the public, the French were the first to make this guarantee really meaningful. They insist on the right of a citizen to know precisely what acts are forbidden, and how they may be punished if committed.

ii. Speedy Public Trial. The right to a speedy public trial, which is too often denied in American courts, is actually accorded by the French. Observers familiar with the common law never fail to comment on the dispatch of French criminal justice.

iii. Opportunity for Defense by Counsel. The right to counsel of the defendant's choice was not only recognized, but observed in practice, by pre-war French justice. Moreover, courts followed the practice of appointing counsel for the defense where the defendant was unable to supply any for himself. Since 1897, the defendant has enjoyed right to counsel in the preliminary examination as well as in the trial itself. The Code of Criminal Procedure provides for certain delays between accusation and trial, and between trial and execution, in order to permit preparation of a defense, or an appeal.

iv. Jury Trial. Trial by jury is guaranteed in felony cases. Although there is no jury in misdemeanor cases, it is important to notice that the decision of the

District Criminal Court is made by three judges, not by a single one. A majority of them is sufficient to convict. In a jury trial, a two-thirds majority (eight to four) decides. In the instance of a jury divided seven to five, the three judges add their votes to those of the jury and a majority of the entire fifteen gives the verdict.

v. Self-incrimination. A Frenchman accused of crime has the right not to be forced to testify against himself, although the sanctions of this right are somewhat different from those in the United States. He cannot refuse to be questioned, and the judge and jury are free to draw inferences of guilt from his refusal to answer. In this respect, his protection is less complete than in common law countries. In another respect, his protection is greater, since a confession made to the police or to the Examining Judge cannot be used in the trial. Any form of torture or oppression to obtain evidence.is of course forbidden.

b. Rights Which Are Not Guaranteed.

i. Habeas corpus. The writ of habeas corpus has become the symbol in common law of the right to freedom from imprisonment except on "reasonable and probable" proof of guilt. This right (which is frequently violated in America) does not exist in France; the Examining Judge need not dismiss the accused merely because proof has not yet been found and may hold him while the proof is being gathered. Legislation looking toward "provisional liberty" of the accused was enacted in 1933, but proved ineffective, and was partially repealed in 1935.

ii. Proof "beyond a Reasonable Doubt." It is completely untrue that a French defendant is presumed guilty until proved innocent. Not only must the offense be proved when the defendant denies guilt; it must be proved in all cases, and a confession does not dispense with proof. However, there is no such emphasis on the "burden" of proof as in American trials, and no requirement that guilt be proved "beyond a reasonable doubt." Proof is sufficient if it convinces the jury and judges.

8. Procedure in Military Courts. Under the liberal military code of 1928, procedure in military courts (*tribunaux militaires*) closely approximated that of the civilian criminal courts (*tribunaux de droit commun*), at least in peace time. The preliminary examination of an Examining Judge was provided for, as well as an appeal to the Court of Cassation on points of law. In time of war, a military court of cassation was to supplant the civilian court, and delays between accusation and execution of sentence were considerably curtailed, but the essential features of procedure remained.

B. Changes since the Outbreak of War.

1. Changes before the Armistice. In order to appreciate the significance of Vichy's changes in procedure, it is important to recognize the extensive relaxations of civil rights which had already taken place. Pre-war laws provided

for the acceleration of procedure in military tribunals, and for the extension of their jurisdiction to non-military offenses of military personnel. Other laws gave the prefects a power of investigation and arrest independently of the work of the regular criminal courts, and without the same procedural safeguards to the accused. Thus the summary pursuit and investigation of offenses were amply provided for.

2. Changes Effected by Vichy. Vichy first attacked the assurances of a fair trial in the regular courts. Defendants accused of communistic or anarchistic acts were deprived of their right to counsel of their choice. The opportunity to obtain sympathetic counsel was further undermined by the purging of Jews, foreigners, and Free French sympathizers from the bar, as well as from the bench. The independence of the jury was sapped by requiring it to deliberate in conference with the judges, rather than secretly. Changes in the criminal code invoked the death penalty for crimes not formerly capital, such as thefts and burglaries committed under "black-out" conditions. Acts endangering the safety of the state were to be tried in the absence of the accused.

However, Vichy's attacks on procedure in the existing system of courts has become largely irrelevant through the institution of special courts, in which there is no preliminary examination, no adequate time for preparation of defense, no appeal, and no jury. Finally, defendants were deprived even of the assurance of fairness inherent in the employment of professional judges. Courts martial, which for the acceleration of procedure in military tribunals, and for the extension of their jurisdiction to non-military offenses of military personnel. Other laws gave the prefects a power of investigation and arrest independently of the work of the regular criminal courts, and without the same procedural safeguards to the accused. Thus the summary pursuit and investigation of offenses were amply provided for.

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There is also a large amount of detention and punishment achieved without even the mockery of a court martial. In addition to their powers to investigate crime, prefects were given the power of "administrative internment" -- imprisonment without relation to crime. In the occupied zone, which now includes all of France, German authorities seize suspects either before or after action is commenced by French officials.

C. Problems of the Liberation

The first problem after the liberation of France will be to restore order out of conditions of rebellion and revolution which will have existed for months or years. For this purpose, a vigorous prosecution of the criminal laws will be necessary. Persons and property must be protected, if commerce and industry are to be resumed.

For this purpose, the French system of criminal justice is excellently fitted. If it is a little callous to certain civil liberties, it is still one of the most efficient systems known. Nor has evidence shown that it misbrands more innocent citizens than any other system.

Even in zones close to military operations, there are reasons for believing that a French civil court could proceed as expeditiously as a foreign military court. This is true since all prosecution depends on the willing cooperation of the witnesses.

There does not, however, appear to be any reason for the preservation of the laws which violate elementary principles of justice recognized alike by the French and by English-speaking peoples. The right to deprive the accused of counsel of his own choice will serve no purpose in a regime designed to reestablish security, nor will a jury which is required to deliberate under supervision.

A few small portions of the Vichy legislation may however be found useful or necessary for a limited period of unsettlement. In this category fall the provisions for a larger jury panel, and for carrying over old names until a new list can be compiled. The latter will call for some examination into the character of the jurors who have been permitted to remain on the lists.

VI. FRENCH JUSTICE IN CIVIL AFFAIRS

A. Divisions of Jurisdiction

The diverse matters which an American lumps under the head of "civil litigation", as opposed to "criminal," are considered by Frenchmen to fall into entirely separate categories. All claims against the government, for example, are excluded from the ordinary courts; they must be decided by administrative tribunals which are organized on a completely different basis and apply a different law. Since the government operates the postal system, the telephone and telegraph, and the railways, a very considerable part of the law which would come to the ordinary civil courts in the United States is strictly consigned to a special jurisdiction in France.

Even in the administration of justice between private individuals, the French has drawn important lines of demarcation where Americans have none. Business transactions generally fall within the scope of the French Commercial Code, and lawsuits arising out of them are tried in Commercial Courts. Individual disputes over employment contracts are also taken from the ordinary civil courts, to be tried by Prudent Men's Councils. Collective bargaining controversies are not submitted to courts of law, but to Boards of Conciliation and Arbitration. Justices of the Peace have exclusive jurisdiction not only of small claims, but of many special subjects of litigation without regard to the amount involved.

Consequently, the first question in any French litigation concerns the jurisdiction in which it falls. The rules are entirely too numerous to be readily summarized, and a doubtful litigant would be likely to consult an advocate to determine to what court he must go. The question has important collateral implications, since rules of procedure and of evidence differ among the various courts.

B. Procedure in the Various Courts which Handle Civil Affairs.

French treatments of procedure usually describe the procedure of each court separately, and a detailed analysis could hardly be made in any other way. But there are important common features among the various procedures, and a vast amount of cross-reference is inevitably required. In this short survey it will be convenient to look at the various steps of procedure for all the courts at once, noticing the important variations.

1. Conciliation. The French are profoundly persuaded that the best course in any litigation is to avoid it entirely. Accordingly, they have required litigants in the District Civil Court to show in nearly every case that an attempt at conciliation has been made, through the offices of the Justice of the Peace. Even in suits against the government, where conciliation in its ordinary form is not required, the claimant must give the government prior notice (memoire au prefet) by a letter setting forth the nature of the claim.

Exceptions to the rule requiring conciliation are granted where the plaintiff can show the necessity of speed in the disposition of the case. This reason is said to exist in all commercial cases, so that no conciliation proceeding is required for them. Before the other special tribunals, special conciliation procedures exist. The Prudent Men's Councils have two divisions, one for conciliation (bureau de conciliation), the other for deciding merits of the case. The Justice of the Peace is required to attempt first to conciliate the cases which he himself will decide if conciliation fails.

2. Summons. The initial process by which a French plaintiff (demandeur) summons a defendant (défendeur) bears striking resemblances to the common law summons. It is known by a variety of names, depending on the court in which the suit is brought -- assignation, adjournement or citation, -- but in nearly every case is issued and served upon the defendant by the court bailiff (huissier). It shows the name of the plaintiff's solicitor (if any), the place where the plaintiff may be served with process and/or with notices (election de domocile), the grounds of suit (libelle) and the time allowed the defendant to appear and put in his defense. In the Labor Council, the summons may be replaced by a mere registered letter (lettre récommandeé) giving essentially the same information as a summons.

3. Contentions of the Parties. The written "pleadings" by which the issues are developed in common law courts -- the

plaintiff's declaration, defendant's answer, and possible further exchanges -- are strikingly absent from modern French procedure. At an earlier time, the summons contained a detailed exposition of the plaintiff claim, like a common law "declaration", but that has been reduced to a mere identification of the subject of suit. The defendant's answer (défense) and plaintiff's reply (réponse) may theoretically be filed in the Civil Court, but have been deprived of all significance by a series of laws culminating in 1935.

The contentions of the parties are now stated in the "conclusions" rather than in a series of pleadings. In the District Civil Court, these must be written, and are exchanged simultaneously a few days before hearing, but they may be freely amended at any time before the close of argument. In the Commercial Courts, Justice of the Peace Courts, and Labor Councils, the conclusions are wholly oral, unless the parties of their own volition put them in written form. At the hearing, the parties further advance their claims by oral arguments (débats) on what the evidence proves and how the law applies.

Only in the Council of State does a "written" procedure exist at the present time. There is a complaint (requête en demande), answer (défense) and reply (réponse); even the arguments of counsel (débats) must be in writing. Oral argument is sometimes permitted, but it cannot introduce new contentions which are excluded from the briefs.

4. Evidence. The most striking peculiarity in French procedure, as contrasted with that of the common law, concerns the way in which the parties prove their case. There is no "trial" in which the plaintiff presents his witnesses, and the defendant follows with his; there is no examination of witnesses by counsel, no cross-examination, and none of the objections to testimony which are so conspicuous in common law procedure.

In procedures where speed and simplicity are primary objectives, the witnesses do appear before the court which is to decide the case. But they are examined by the Presiding Judge, rather than by counsel. This occurs in the Justice of the Peace Courts, the Labor Councils, the Commerce Courts, and in "summary procedures" (procédures sommaires) of the Civil Court.

In the ordinary procedure of the Civil Court, the taking of testimony is much more formal. It must be taken by a judge specially commissioned for the purpose (juge commissaire) by an order of the court which specifies the questions on which the testimony is to be taken. Differences are recognized according to whether the proceeding is designed to test the authenticity of a private document (verification d'écriture) or of an official document (inscription en faux), to require an adverse party to testify (interrogatoire), or to take testimony of disinterested witnesses (enquête). Only in the case where the parties themselves tell conflicting stories of the same event do they appear to testify before the court which is to decide the case, in confrontation (comparution personnelle). In any event, the testimony of witnesses is not stenographically recorded word for word; condensed minutes (procès-verbaux) are made by the court clerk, giving the substance of the proof.

In cases where proof by written documents is possible, oral evidence is the exception rather than the rule. Copies of documents are attached to the parties' "conclusions," and testimony is taken only if the authenticity of the documents is challenged. In all cases, oral testimony of the persons most likely to know the facts is excluded by rules governing the competency of witnesses. The parties cannot testify on their own behalf, nor may their spouses, ancestors, or descendants. Also excluded are persons convicted of felonies or misdemeanors. A larger body of persons may be challenged (réproche), but permitted to testify, leaving the weight of their testimony to the court. Among those subject to challenge are close relatives by blood or marriage, servants, persons under indictment, those who have dined or drunk with a party prior to the inquest and since it was ordered, and finally those who have made written statements in favor of one party. The last rule causes particular difficulty in accident cases if statements have been taken from witnesses of the accident. The application of the law in these cases is somewhat unsettled.

In the Council of State, testimony is taken prior to the hearing in court by officers who may be compared to

American Masters in Chancery, or Referees (maitres des requêtes, auditeurs).

5. Judgment. There are no juries in the French courts which decide civil controversies. Judges decide the facts and the law. The resulting contrast with American procedure should not, however, be exaggerated. It will be recalled, in the first place, that juries are frequently waived in civil matters in the United States, and that in courts of equity, which hear a substantial proportion of civil litigation, there are normally no juries at all. At the same time it is to be recognized that French courts have some of the characteristics of juries. In all courts except that of the Justice of the Peace there is more than one judge -- at least three. Moreover, the judges in the Prudent Men's Councils and in the Commerce Tribunals are laymen who bring to the case their experience in the kind of affairs which are involved.

The decisions (arrêts) of French courts assume a written and a rather rigid form in all courts. Unlike an American Jury verdict, which usually tells only who is the winner and how much he is awarded, they must recite the facts and legal considerations on which they are based. In this respect they may be compared with the findings of fact and conclusions of law of American equity practice. The findings and conclusions are contained in a long series of clauses beginning with the French equivalents of "whereas" (attendu que or considérant que), and lead up to the succinctly stated judgment that the plaintiff shall recover a stated amount from the defendant, or whatever the decision may be.

It is impracticable to set out appeal procedure in this brief review of French procedure. Some observations on jurisdiction of appeals are contained above in the discussion of courts.

C. Vichy and the Problems of Liberation

Vichy has neither tampered in any important degree with the system of civil justice, nor set up a substitute system. It is true that civil justice has languished, largely because men who fear to lose their lives or liberties lose interest in infringements of contract, or encroachments upon property.

To restore civil justice to a healthy state, nothing appears necessary beyond a return to peace and security, and the restoration of a representative bench and bar in whom the citizens have confidence. Emergency measures, or temporary courts, would seem to defeat their purpose if they aimed to aid civil justice. The objective of Frenchmen will be to return to their traditional institutions.

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CIVIL AFFAIRS INFORMATION GUIDE

THE ADMINISTRATION OF JUSTICE IN FRANCE

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WAR DEPARTMENT,
WASHINGTON 25, D. C., 29 July 1944.

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BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:
J. A. ULIO:
Major General,
The Adjutant General.

NOTE

Civil Affairs Guides and Civil Affairs Information Guides are designed to aid Civil Affairs Officers dealing with problems in theaters of operation, each Guide being focused upon a specific problem in a particular area. These Guides are not basic collections of factual information, as are the Civil Affairs Handbooks, nor are the recommendations (or action programs implied in the Guides) intended to take the place of plans prepared in the field. They are rather designed to point the factual information toward the making and executing of plans by those Civil Affairs Officers assigned to this work in the theaters of operation. *In no sense is a Guide to be taken as an order.* Such orders will be issued in the normal manner.

This Guide was prepared under the supervision of the Committee on Civil Affairs Guides and is approved by the Committee.

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TABLE OF CONTENTS

Page

SUMMARY 1
I. FRENCH SYSTEM OF LAW 2
A. Code System 2
1. Significance of the French Code System 2
2. Compilation of Statutes 2
3. Enactment of Law in Statutory Form 3
4. Judicial Process under Code Law and under Common Law 3
B. Types of Legislation 4
1. Statutes 4
2. Decree-Laws 4
3. Decrees and Orders 5
4. Local Ordinances 5
C. Effects of Vichy on the Legal System 5
1. Changes 5
2. Additions 5
D. Problems of the Liberation 6
1. Restoring the Legal System of the Third Republic 6
2. Nullification of Vichy Legislation 6
a. Types of Legislation 6
b. Total or Partial Nullification 6
c. Agencies of Nullification 7
i. The Courts 7
ii. Administrative Officials 7
iii. A Legislative Body 7
I. SYSTEM OF COURTS 8
A. Under the Third Republic 8
1. Justice of Peace Courts 8
a. Distribution; Composition 8
b. Jurisdiction 8
c. Appeal 8
2. District Court 8
a. Distribution; Composition 8
b. Jurisdiction 9
c. Appeal 9
3. Court of Appeals 9
a. Distribution; Composition 9
b. Jurisdiction 9
c. Appeal 10
4. Court of Assizes 10
a. Distribution; Composition 10
b. Jurisdiction 10
c. Appeal 10
5. Court of Cassation 10
a. Composition 10
b. Jurisdiction 10
6. Prudent Men's Councils 11
a. Distribution; Composition 11
b. Jurisdiction 11
c. Appeal 11
7. Commerce Court 11
a. Distribution; Composition 11
b. Jurisdiction 11
c. Appeal 12

I. SYSTEM OF COURTS—Continued.
- A. Under the Third Republic—Continued. Page
  - 8. Military Tribunals 12
    - *a.* Distribution; Composition 12
    - *b.* Jurisdiction 12
    - *c.* Appeal 12
  - 9. Administrative Courts 12
    - *a.* Explanation 12
    - *b.* Inter-department Prefectural Councils 12
    - *c.* Council of State 13
      - i. Composition 13
      - ii. Jurisdiction 13
  - 10. Court of Conflicts 13
    - *a.* Composition 13
    - *b.* Jurisdiction 13
  - 11. High Court of Justice 13
  - 12. Summary 14
    - *a.* Criticisms 14
    - *b.* Commendations 14
- B. Vichy and the Courts 14
  - 1. General 14
  - 2. Modifications in Previous System 15
  - 3. Vichy Additions to Court System 15
    - *a.* Supreme Court of Justice 15
    - *b.* Council of Political Justice 15
    - *c.* State Tribunal 16
    - *d.* Special Criminal Court 16
    - *e.* Special Sections within Court of Appeals 16
      - i. Court for Night Offenses 16
      - ii. Sections to Try "Communists" 16
    - *f.* Court-Martial of Gannat 16
    - *g.* Special Courts-Martial 16
    - *h.* Summary 16
- C. Problems of Reorganization 17

III. JUDGES 18
- A. Under the Third Republic 18
  - 1. Non-professional Judges 18
  - 2. Justices of the Peace 18
  - 3. The Higher Judiciary 19
    - a. Requirements for Entrance 19
    - b. Promotion 19
    - c. Social Position 19
- B. Judges under Vichy 20
  - 1. Initial Removals 20
  - 2. Replacements 20
  - 3. Subordination to Instructions 20
  - 4. Instances of Defiance 20
- C. Restoration 21

IV. LEGAL PROFESSION 21
- A. Organization 21
  - 1. The Parquet 21
  - 2. Advocates (the "Bar") 22
    - a. Functions of Advocates 22
    - b. Position of the Bar 23
  - 3. Solicitors 23
  - 4. Commercial Lawyers 24
  - 5. Notaries 24
  - 6. Consultants 24
  - 7. Court Clerks 24
  - 8. Bailiffs 25
- B. Effects of Vichy on the Legal Profession 25
  - 1. Formal Attacks 25
  - 2. Undermining the Profession 25
- C. Problems of the Liberation 26

Page

V. FRENCH CRIMINAL JUSTICE 26
- A. Steps in Prosecution and Punishment 26
  - 1. Preliminary hearing 26
    - *a.* Grades of Offenses 27
      - i Felonies 27
      - ii. Misdemeanors 27
      - iii. Contraventions 27
    - *b.* Direct Citation for Trial 27
    - *c.* Examining Judge 27
  - 2. Indictment: The Accusation Chamber 28
  - 3. Chart 28
    - Chart of Typical Prosecution of Crime in France and in the United States 29
  - 4. Trials for Criminal Offenses 30
    - *a.* Inquisitorial and Accusatorial Procedure 30
    - *b.* Function of the Court in French Criminal Trials 30
    - *c.* Function of the Jury in French Criminal Trials 30
    - *d.* Civil Party in a Criminal Trial 31
  - 5. Appeals 31
  - 6. Penalties 32
  - 7. Rights of the Accused 32
    - *a.* Rights which are Guaranteed 32
      - i. Ex Post Facto Laws 32
      - ii. Speedy Public Trial 32
      - iii. Opportunity for Defense by Counsel 32
      - iv. Jury Trial 32
      - v. Self-incrimination 33
    - *b.* Rights which are not Guaranteed 33
      - i. Habeas corpus 33
      - ii. Proof "Beyond a Reasonable Doubt" 33
  - 8. Procedure in Military Courts 33
- B. Changes since the Outbreak of War 33
  - 1. Changes before the Armistice 33
  - 2. Changes Effected by Vichy 33
- C. Problems of the Liberation 34

VI. FRENCH JUSTICE IN CIVIL AFFAIRS 35
- A. Divisions of Jurisdiction 35
- B. Procedure in the Various Courts which Handle Civil Affairs 35
  - 1. Conciliation 35
  - 2. Summons 36
  - 3. Contentions of the Parties 36
  - 4. Evidence 36
  - 5. Judgment 37
- C. Vichy and the Problems of Liberation 38

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SUMMARY

1. The liberation of France will pose the problems of restoration for French laws, the courts, judges, the legal profession, and the normal processes of justice. This report outlines the organization of judicial affairs under the Third Republic and notes the changes and additions made by the Vichy Government since July 1940.

2. At the basis of the whole legal system is the set of codes, begun under Napoleon I and today copied by most of the nations of the world. Codification of statutes has led French justice to be administered *more* in terms of the spirit of the law as it applies to each case and less in terms of *stare decisis* or Judicial precedent, which is so fundamental in English-speaking countries. Vichy has not altered the contents of the various codes, but the totalitarian emphasis on the State has defeated the spirit of republican law and has worked to the detriment of the individual.

3. The French courts are divided into two groups: (1) The ordinary civil and criminal courts which handle disputes between private parties and trials of private citizens, and (2) the administrative courts, which hear complaints against official acts of the Government. Vichy has let the second group fall into disuse, for the State in the New Order is not answerable to those it rules. Furthermore, the Pétain regime has added courts of its own creation. The latter have been designed to enforce totalitarian political controls and racial discrimination. The French people, once they can act for themselves, will scarcely permit any of these new tribunals to survive the period of suppression of which they are one expression.

4. The bench and the public ministry of France are entirely separate from the private practitioners of law. A young law student chooses either to work for a place in the "magistracy" or else to enter the practice.

5. The most important portion of the magistracy is the higher judiciary, which has a rigid code of etiquette and professional discipline. It has been purged of Vichy's political enemies, insofar as possible, but some members of the bench have clung to their independence in the face of governmental pressure and punishment. The liberation of France will undoubtedly see a counterpurge of the pro-Vichy judges. Freeing the courts will be ineffectual until the independence of the judges has been restored.

6. The legal profession outside the judiciary includes advocates, solicitors, notaries, commercial lawyers, consultants, court clerks, and process servers, all of whom fall under the classification of "auxiliaries," and the staffs of the Attorneys-General and District Attorneys, who make up the parquet or public ministry. Vichy has attacked Jews, Free Masons, Gaullists, and Communists among the lawyers and

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has seen to their replacement by many men of inferior quality and trustworthiness. The profession is fortunately well organized and can be expected to return to its standards once it is rescued from the present restraints.

7. French criminal justice has long been noted for its speed, its efficiency, and the inquisitorial nature of its procedure. Some of the penalties are harsh, but under the Republic there was a recognition of certain rights of the accused which Vichy has tended to suppress in favor of more arbitrary handling. Discrimination on the basis of race and politics is one feature which discredits the influence of the Pétain regime; governmental interference in reaching judgments is another.

8. Civil justice, which rests upon the excellent Civil Code, was criticized before Vichy for its slowness and expense but seldom for any lack of fairness. Vichy has not tampered significantly with civil justice, except that interference with judges cannot help lowering the standards of all courts. France has native peculiarities in the administration of justice which make indispensable a procedure of restoration by the French themselves. Criticisms as to details of the old system do not lessen the Frenchman's determination to eradicate the controls of Vichy and Berlin and to return to laws, courts, and judicial personnel consistent with personal freedom.

I. FRENCH SYSTEM OF LAW

A. Code System

1. Significance of the French code system.—French law shares with English common law the distinction of being one of the two legal systems in wide use among modern industrialized nations. The French legal system has been copied not only in regions with a direct French heritage, like Louisiana and Quebec, but also in nearly all the countries of Europe, throughout Latin America, and in Egypt, Turkey, and Japan. Even where it has not been copied in detail, it has had profound influence, as in the many American States which have adopted the code principle to a limited degree.

The "codes" of many of the United States are, however, far from the code system as it is known in France and in countries which have closely copied her institutions. It is important to see the real differences between the system of law in most of the United States and in France. These differences are marked in:

(1) The compilation of statutes.
(2) The enactment of law in statutory form.
(3) The judicial process.

2. Compilation of statutes.—The first purpose of the men who codified French law under Napoleon was to gather in one place the statutes which govern men's conduct. In England or France at that time, the governing statute on any particular subject might repose in any of the parliamentary records of several preceding centuries. In the American States, the situation was even further complicated, since a lawyer had to know which of the English statutes applied in the colonies, and had also to consider the applicability of the acts of state and colonial legislatures.

The French were the first nation in modern times to attempt assembling their laws into one official repository—the codes. The French example gave a powerful impetus to a similar movement in the American States, many of which, during the course of the nineteenth century, also assembled their laws into "codes." In States which did not officially codify their laws, private publishers prepared compilations which had almost the same effect in making the statute law available to lawyer and laymen. In respect to the compilation of statute law, therefore, the practical difference between the French system and the common law system is not great at the present time. But compilation is only one of three important points of differentiation.

The French codes adopted in the Napoleonic era were five in number, only one of which, the Civil Code (*code civil*) is properly called the "Code Napoleon." The other four were the *Code of Civil Procedure* (*code de procédure civile*), the Penal Code (*code pénal*), the Code of Criminal Procedure (*code d'instruction criminelle*) and the Commercial Code (*code commercial*). While these codes contained the bulk of the law which was of interest to the ordinary layman, a considerable body of law remained outside them. This body grew as parliaments proceeded to legislate without further codification. Some of the additional law has since been compiled in the Military Code (*code militaire*), the Forest Code (*code forestier*) and the Labor Code (*code de travail*), and various taxation codes. There remain uncodified large bodies of law regarding government administration and social welfare, as well as various statutes which supplement the codes but which have never been formally incorporated. Privately published digests or compilations (*recueils*) must be relied on to find these laws.

3. Enactment of law in statutory form.—The second purpose of the Napoleonic codifiers was to put all law into the form of statutes enacted by the parliament. In France, as in common law countries, much of the law had never been written down as an express command. In England, for example, it was nowhere expressly stated that thievery was a crime to be punished by hanging, although judges had followed this rule so often that it was generally recognized. The codifiers aimed to write down all such rules in plain terms, and have them enacted by the legislature. The written rules could then be assembled in the codes.

With respect to the enactment of rules which were previously contained only in judicial decisions and customs, France has far surpassed any common law country. In most American States, the legislature has never yet enacted the elementary rule that a binding contract may be made by mutual agreement of the parties, or that assault and battery shall be recompensed in damages. Law of this kind can be found only in decisions of the courts, or in privately published textbooks and encyclopedias which may be reliable, but are never binding on the courts. In France, on the other hand, all the rules by which courts are governed in ordinary civil disputes are derived more or less directly from some express enactment of the legislature. The only substantial body of law which does not rest on statutory provisions is in a field so new that it is still developing—that of administrative law. Most of this has grown up since 1872·

4. Judicial process under code law and under common law.—The third purpose of the framers of the French codes was to tscape from the rule of "precedents" in the administration of justice. Before most of the law had been put in statutory form, judges relied primarily on prior practice in making their decisions. Times might change, and the old rule become hopelessly out of date, but the judges followed the old rule for lack of any other. In common law countries, this practice is known as *stare decisis*—to stand by the decisions previously made. The French codes specifically forbade any such practice, and required the judge to follow the words of the statute as they were written, rather than any previous interpretation of it.

In conformity with the letter of the law, French judicial decisions contain no such discussion of the previous rulings as will be found in the opinion of common law judge. After a long series of whereas clauses (*attendu que* * * *), which recite the facts and cite the provision of the code, the judge gives his decision with little to reveal how he figured it out.

The apparent simplicity of French opinions conceals their real complexity. Frequently the governing code provision states only a very general principle, such as the rule that he whose fault causes injury to another shall pay for the damage. "Fault" may mean intention to injure, or mere negligence; "cause" may refer to direct consequences, or to very remote connections. In deciding how to give judgment in such a case, a French judge is guided by two principal sources of authority in addition to the statute. First, there are the opinions of prominent writers, usually university professors, which are known as "doctrine." Second, there are the previous decisions, which are called "jurisprudence." The language of the judge reveals to a shrewd observer which lines of doctrine and jurisprudence were followed in the decision.

In spite of the influence of doctrine and jurisprudence on French judges, their methods mark them off fairly sharply from the common law brethren. First, they are governed primarily by statutes, rather than by cases. Second, when they cannot decide the case with the aid of the statute alone, they give a relatively greater emphasis to doctrine as opposed to jurisprudence. Third, they do not hesitate to interpret a statute in a new and surprising way merely because previous cases have decided otherwise.

B. Types of Legislation

1. Statutes.—The supreme law of the land, which no official is privileged to disregard, and no court can invalidate, is laid down by the statutes of parliament. They are called *lois*, a term which is rather more restrictive than the English word "laws." Before taking effect, they must be published in the governmental publication, the *Journal Officiel*. If a change is made in the law of contracts, for example, it will ordinarily be effected by a statute which modifies some section of the Civil Code. The great bulk of laws currently enacted, however, do not affect the codes. Relating as they do to the exercise of powers by the government, the regulation of trade and industry, or the extension of social services, they augment the body of uncodified French law.

2. Decree-laws.—The inability of parliament to agree promptly on legislative measures in the foreign and domestic crises of the past 30 years has given rise to a new form of legislation which has no counterpart in the governmental practices of the United States, although it may be compared to the exercise of special powers in wartime by English and British dominion governments. In effect, the parliament delegates its power of legislation for a limited time to the cabinet.

It reserves the right to ratify or overrule at the end of a specified time the legislation which the government has already put into effect. The only limitation of the legislative power which is delegated in this way is that it must relate to a specified subject, such as national defense or maintaining the value of the franc.

These "decree-laws" (*decréts-lois*) are signed by the "chief of state"—under the Third Republic, the President—and are countersigned by one or more of the ministers. There has been some disagreement on the extent to which a decree-law is subject to invalidation by decision of the courts; as yet, the Council of State has not undertaken to set one aside. A decree-law presumably attains the dignity of a statute when parliament ratifies it expressly or fails to repeal it.

3. Decrees and orders.—A more restricted type of executive legislation is accomplished by decrees (*decréts*). Like decree-laws, decrees are signed by the chief of state and countersigned by one or more ministers.

Decrees are not a symptom of abnormal crisis but are a customary feature of French Government at all times. When a statute provides for the nationalization of the police of a city, it is likely to state that the details of the national organization must be specified by decree. The Minister of the Interior then prepares a decree specifying the number of departments, the number and the salaries of officers, and so on. A decree of this sort may be compared with certain of the Executive Orders issued by the President of the United States. Other decrees, governing the use of highways or railroads, may be more like the regulations issued in the United States by the Interstate Commerce Commission.

In addition to decrees of a legislative character, cabinet ministers usually issue large numbers of simple orders (*arrêtés*), signed themselves alone. Scores of such orders appear in every issue of the official gazette (*Journal Officiel*), effecting appointments and dismissals, and relating to other matters of limited application.

4. Local ordinances.—Since France has no states, there is no interlocking of state and federal laws as in the United States. There are, nevertheless, legislative rulings of purely local application, somewhat comparable to the ordinances of American cities or (in a few instances) of counties. In France, they are called *arrêtés*. Prefects have power to issue ordinances relating to health and safety within their departments, and mayors within their communes. The powers of mayors are somewhat broader than those of prefects, but both are limited. They cannot, of course, affect civil rights to any substantial degree, and the criminal penalties which they may impose cannot exceed a fine of 15 francs (less than a dollar) or 5 days in jail.

C. Effects of Vichy on the Legal System

1. Changes.—In the texts and the legal force of the codes, Vichy has made no significant changes. A few provisions have been changed here and there, and criminal penalties have been increased, but the framework remains untouched.

2. Additions.—On the other hand, Vichy has in large measure transformed the workings of the legal system by imposing a number of emergency decrees which so circumscribe the life of a Frenchman as to make the simplicity and logic of the codes of little practical use. That the number of these enactments is excessive was recognized by Pétain himself when he declared in an address to the French people:

"My work and that of my Government are not always exempt from criticism * * *

"Complaints are made of the vexatious ways of certain departments and the discourtesy of officials. The Government must accept a share of responsibility for this, for the offices of the prefects and mayors are submerged under a flood of regulations and decrees the application of which, always a matter of urgency, leaves no leisure nor breathing space to the officials who have to interpret them * * *"

Vichy's legislation is peculiar from a legal point of view in that none of it is in the form of parliamentary statutes. The so-called "statutes" of Vichy are at best decree-laws. They are issued by Pétain to whom plenary powers were delegated by Parliament on 10 July 1940, according to the constitutional theory of Vichy. The merits or demerits of this viewpoint will not be discussed here, but some of the legal problems which arise from it will be referred to.

D. Problems of the Liberation

1. Restoring the legal system of the Third Republic.—Since the legal system of the Third Republic has not been directly impaired, neither legislation nor proclamations would be necessary to restore it. It need only be permitted to resume its normal functioning through the restoration of law and order, and the nullification of many of the emergency decrees and governmental agencies which have been superimposed upon it.

It is true that the codification of much of the prewar legislation remains a needed reform, but it is not immediately urgent.

2. Nullification of Vichy legislation

a. Types of Legislation.—An urgent and difficult problem is presented by the mass of decree-laws, decrees, and ministerial orders which have been issued by Vichy. Some of this legislation is patently vicious, like the rules against Jews and against citizens of foreign origin, and the establishment of extraordinary criminal courts. In some cases it effects "reforms" of disputable merit, like the reorganization of labor and professional organizations, and regulations in protection of the family. In some cases it appears to effect necessary adjustments to the changes of the time. One type of legislation coming within the latter class is that adjusting salaries, fee scales, and jurisdictional requirements to the depreciated value of the franc. Another type is that extending the time for assertion of rights by laborers and prisoners of war in Germany.

b. Total or Partial Nullification.—Two possible ways of dealing with this legislation present themselves:

(i) Declaring all Vichy legislation invalid.

(ii) Setting some portions aside, while permitting some to remain in force.

A strong argument has been made by some patriotic Frenchmen, typified by Tissier, for the total invalidity of everything that Vichy has done. Against this solution there is a theoretical argument, since somewhat arbitrary assumptions of power have been made at previous periods in France and have been given legal sanction. There is also a practical argument, in that the sweeping away of all Vichy legislation would probably create acute problems in those cases where necessary adjustments to new conditions have been made by the Vichy regime. Even where reforms of doubtful value were made, as in the reorganization of professional associations, the sudden abolition of the new organizations would not reinstate their predecessors in full vigor, and the result might be the lack of any controls.

In any event, a distinction must be drawn between the purported statutes of Vichy, and the decrees of ministers, some of which might be justified under pre-Vichy legislation. Mayors and prefects may have issued ordinances at the behest of the new regime which are sustainable under prior statutes. There will certainly be a complex interlocking of valid legislation with legislation which may be considered void.

c. Agencies for Nullification.

i. The Courts.—The courts have been accustomed to assume in America and function of declaring statutes and orders invalid when they violate either the procedural or the substantive law of the United States. But there are serious obstacles to the exercise of this function in France. Only one court—the Council of State—has exercised this function extensively and even it has not done so with regard to statutes. Its power with respect to decree-laws is doubted. Consequently one might expect some timidity and ineptitude in judges unaccustomed to consider nullification as one of their powers. Moreover, there is no body of constitutional inhibition and judicial precedents which could guide different courts toward uniform conclusions in the invalidation of laws.

ii. Administrative Officials.—Administrative officials, either civilian or military, might conceivably proclaim the abrogation of certain legislation and the ratification of other enactsments. Undoubtedly this means would work fairly well in some instances; the Minister of Justice, for example, might announce the restoration to the magistracy of Jews and naturalized citizens who were dismissed by the Pétain government. However, this method involves difficulties where the right involved came into dispute. A judge or official might hesitate to act on an administrative proclamation of invalidity, wondering whether the administrative proclamation had any greater claims to validity than the original law or decree. It is important to remember that the French legal system is based on a close adherence to formal law, with which neither judges nor officials are accustomed to take liberties.

iii. A Legislative Body.—A reconstituted parliament or National Assembly would evidently be able to obtain the smoothest results in dealing with Vichy legislation. It could repeal, reenact, or modify as it should see fit. Since French officials are accustomed to regard the acts of parliament as valid, without questioning their antecedents, the emergency or temporary character of the legislative body would be unlikely to create acute administrative difficulties.

II. SYSTEM OF COURTS

A. Under the Third Republic

1. Justice of the peace courts (justices de paix).

a. Distribution; Composition.—Every canton in France has at least one Justice of the Peace Court, although the same judge may serve in several cantons. Large cities are divided into several districts (*arrondissements de juge de paix*). There were in 1940 almost three thousand Justices of the Peace. Within the court of the Justice of the Peace is found the only exception to the collegial principle in France. All other courts are normally presided over by a panel of judges; but the Justice of the Peace sits alone and delivers judgment without consulting colleagues.

The court, it should be noted, is called a *justice de paix*. The Justice who presides in it, corresponding to an American Justice of the Peace, or "magistrate," is called a *judge de paix*.

b. Jurisdiction.—Constituted as the Police Court (*tribunal de simple police*), the Justice of the Peace hears criminal cases dealing with the mildest type of criminal offenses. These are called *contraventions* and are chiefly transgressions against local ordinances relating to obstruction of public streets and other nuisances. Penalties for contraventions cannot exceed a fine of 15 francs (less than a dollar), and 5 days in jail.

The civil jurisdiction of the Justice of the Peace extends to ordinary civil suits involving debts or personal property where the amount involved does not exceed a certain limit. The maximum was repeatedly increased, and in 1939 stood at 4,500 francs. For specified types of suits such as landlord-tenant and trespass cases, the jurisdiction was unlimited. In 1938 the Justices were given plenary jurisdiction of cases involving workmen's compensation and social security claims.

The Justice of the Peace is also president of the local Family Council (*conseil de famille*), in which capacity he appoints and supervises guardians of the estates of widows, minors, and mental incompetents.

One of the Justice's most important functions is that of conciliation: He is charged with seeking to arrange settlements out of court. An ordinary lawsuit cannot be commenced in the Civil Tribunal without having a certificate showing that it has been first submitted to a Justice of the Peace for an attempted conciliation. The Justices preside over such proceedings in over 700,000 cases each year. It is estimated that in rural areas, where conciliation attempts are more frequently successful, about 40 percent of the cases brought into the proceedings are settled.

c. Appeal.—In civil cases involving less than 1,500 francs, there is no appeal from a decision of the Justice of the Peace, unless he has exceeded his jurisdiction. In the latter case, his judgment may be annulled by the Court of Cassation (*cour de cassation*). This seldom happens, for the costs of the appeal are out of all proportion to the size of the claim. Decisions in excess of this limit may be appealed to the District Court.

2. District court (tribunal d'arrondissement).

a. Distribution; Composition.—Each of the 359 judicial districts of France has its District Court sitting in the chief town of the district. It is a tribunal composed of an odd number of judges who are members of the magistracy (*magistrature*) and thus men of more education and experience than Justices of the Peace. The size of the bench varies with the importance of the particular District Court. The simplest panel includes a president, two subordinate judges (*conseillers*), and two alternate judges. In a large city, on the other hand, there are many more judges and several separate chambers to handle the various classes of business.

b. Jurisdiction.—The District Court sits in two divisions, known as the Civil Court (*tribunal civil*), and the Criminal Court (*tribunal correctionnel*). In a large city, each division may have several chambers. From time to time, judges are transferred from one division or chamber to another. The Civil Court exercises general jurisdiction in civil matters which are not specifically entrusted to other tribunals, such as the small claims handled by the justices, commercial cases, and matters of "administrative law." The Civil Court hears appeals from the Justices of the Peace and from the "Prudent Men's Council" (*conseils de prud hommes*) where the amount involved exceeds a certain sum, and so it is not strictly a "court of first instance" (*tribunal de première instance*), as it is sometimes called.

The criminal division of the District Court tries persons accused of misdemeanors (*délits*).

c. Appeal.—As in the Justice of the Peace court, so in the District Court there must be a minimum money value involved (in most cases 7,500 francs) before a civil dispute can be carried up to the Court of Appeals (*cour d'appel*). In disputes of less importance there is no appeal except on questions of law; in such cases, the appeal goes directly to the Court of Cassation. Criminal cases can always be taken to the Court of Appeals.

3. Court of appeals.

a. Distribution; Composition.—There is a Court of Appeals for each of the 27 appeal districts of France, Algeria, and Corsica. Like the District Court, the Court of Appeals' size depends upon the importance of its particular district. The judges have usually been promoted from a District Court position. The basic structure of a Court of Appeals includes three chambers. One considers civil appeals from the District Civil Courts and the Commerce Courts. A second handles appeals from the District Criminal Courts. A third, the Accusation Chamber (*chambre des mises en accusation*), acts in the capacity of a grand jury, framing indictments of felony, which will be tried in the Court of Assizes.

b. Jurisdiction.—As its name indicates, the principal work of the Court of Appeals, involves decisions brought to it for correction from lower courts. It hears appeals from the District Civil Court and Commerce Court, where more than 7,500 francs are involved, and from the District Criminal Court in all cases. Unlike most American appellate courts, the Court of Appeal does not confine itself to errors of law committed by the court below. It may review the evidence and make new findings of fact.

The functions of the Accusation Chamber are not appellate at all, but investigative and accusatory. They are more fully explained below in the section on "Criminal Justice."

c. Appeal.—Appeal from the Court of Appeals can be carried only to the Court of Cassation, and is restricted to points of law. There can be no higher judgment on the facts (*au fond*).

4. Court of assizes (cour d'assises).

a. Distribution; Composition.—The Court of Assizes is the only itinerant French court, covering a circuit which varies from as few as two departments in some cases to as many as five in others. It is a nonpermanent court, holding session in the principal town of each department three times a year. The bench is composed of a president, who must be a judge of the Court of Appeals in that district, and two judges who are temporarily assigned to the Assizes from either the Court of Appeals or the local District Court. It is the only French court which uses a trial jury. The latter is composed of 12 members and 2 alternates.

b. Jurisdiction.—The Court of Assizes has one sole item of business: The trying of the most serious offenses, which the French call *crimes* and which the English-speaking peoples call felonies. This completes the coverage of criminal cases. The Justice of the Peace tries contraventions. The District Criminal Court tries misdemeanors.

c. Appeal.—Appeal from the Court of Assizes can be carried only to the Court of Cassation. No question can be raised as to the decision regarding facts. The Court of Cassation can simply be asked to examine points of law involved.

5. Court of cassation (cour de cassation).

a. Composition.—The supreme court of France for all cases except those of administrative law is the Court of Cassation. *Cassation* means the "breaking," or reversal, of erroneous judgments of tribunals. The court sits in Paris and hears appeals from every part of the French Empire. At the head of the Court there is a "first president." Under him there are four chambers, each with its own president and panel of several judges. The names of two of these divisions make their roles self-evident: the Criminal Chamber (*chambre criminelle*) and the Civil Chamber (*chambre civile*). The third is the Chamber of Requests, which screens appeals to the Civil Chamber and determines whether or not the appeal merits consideration by the latter body. Its activity may be compared to the grant or denial of petitions for certiorari in the United States Supreme Court.

A fourth division of the Court of Cassation, called the Social Chamber (*chambre sociale*) was added in 1938. It is apparently designed to protect the public interest in justice in cases where the parties would be unable to prosecute their own appeals with sufficient vigor. Entrusted to it are matters such as appeals from Justices of the Peace and from "Prudent Men's Councils," workmen's compensation cases, and matters involving wards of the State.

b. Jurisdiction.—The Court of Cassation hears appeals from lower courts, including, in peacetime, Military Tribunals (*tribunaux militaires*), based on points of law only. It does not presume to question the facts as found by the lower courts. It will occasionally annul a previous decision and dismiss the case outright; but this is only under rare and peculiar circumstances. Normally the function of the Court of Cassation, if it disagrees with the legal conclusions of the lower court, is merely to quash (*casser*) the judgment. The case is then remanded for rehearing in a lower court which has not previously heard the case. If the second court rejects the Court of Cassation's views (as it is permitted to do), and repeats the decisions of the original lower court, the case comes again to the Court of Cassation, which sits in solemn session (all chambers present) to consider the question. If it persists in its previous decision and again remands the case to a third lower court, this last court is bound to implement the opinion of the Court of Cassation.

6. Prudent men's councils (conseils de prud'hommes).—Besides the regular hierarchy of civil courts under the Court of Cassation there are three special jurisdictions which need to be mentioned. One of these is the Prudent Men's Council. This title, which sounds quaint in English is not less so in French; it reflects the belief of its revolutionary founders that "common sense" would furnish the rationale of its jurisprudence.

a. Distribution; Composition.—In any locality where enough municipal groups, such as the chamber of commerce, desire it, a Prudent Men's Council may be established by decree of the Minister of Justice (*garde des sceaux*). In a large city there may be two Councils, one dealing with commercial employment, the other with industrial. In rural areas, there may be an agricultural council. Such a Council is composed of employers and employees, an equal number of each, all elected by their associates. If the president one year is an employer, the vice-president is a worker; and the following year it will be vice versa. In evenly divided votes, the local Justice of the Peace decides the issue.

b. Jurisdiction.—The Council is concerned with individual disputes arising from labor contracts in commerce, industry, or agriculture, such as wage claims by employes, or claims by employers for breach of contract of employment. It does not handle cases arising in domestic or casual employment, and has nothing to do with workmen's compensation for personal injuries; these controversies are heard by Justice of the Peace or District Civil Courts. Neither is it concerned with disputes between labor unions and employers over collective bargaining agreements; these controversies must be submitted, since 1937, to special boards of conciliation and arbitration.

In localities where no Prudent Men's Council exists, cases which would be decided by it go to the Justice of the Peace.

c. Appeal—Appeals from the decision of a Prudent Men's Council, in cases involving more than 1,500 francs, are taken to the District Court. In lesser cases, the Council's judgment can be attacked only in the Court of Cassation, on a charge of violation of law, or of *ultra vires* action.

7. Commerce court (tribunaux de commerce).

a. Distribution; Composition.—A second class of specialized tribunals are the Commerce Courts. There are 225 arrondissements whose commercial importance has warranted their establishment, which is accomplished, by presidential decree. In the other 161 arrondissements, the same work is done by the District Court. The Commerce Court is composed of an odd number of judges, elected for 1 year from among the merchants of the district. Women may not serve as judges but may vote. The judges-elect choose a president from among their own number.

b. Jurisdiction.—Cases of indebtedness and contractual obligations arising from commercial transactions regularly come before the Commerce Court, as well as matters involving corporate or partnership organization. These are decided on the basis of the Commercial Code, of decrees and laws covering business transactions, and of local usage. If no Commercial Court has been established, commercial disputes must be decided by Justices of the Peace or the District Civil Courts, depending on the amount involved.

c. Appeal.—Appeal from the Commerce Court can be carried to the appropriate Court of Appeals.

8. Military tribunals (tribunaux militaires).—The third group of specialized courts in the hierarchy headed by the Court of Cassation are the Military Tribunals.

a. Distribution; Composition.—There is a military court for each military region and a naval court for each naval region. The bench is composed of comrades and superiors of the accused, including officers and noncommissioned officers. When an enlisted man was on trial, there had to be one noncommissioned officer included in the panel of judges, until Vichy suppressed this practice. The trial proceeds along lines similar to those of a regular trial in a civil court.

The regular military tribunals are to be distinguished from *cours martiales*, which proceed in disregard of legal guaranties and which were outlawed by Parliament during the first World War.

b. Jurisdiction.—A Military Tribunal has jurisdiction over all service personnel within its region. It tries uniformed culprits for infractions, not only of the Military Code but also, in wartime, of the civilian Criminal Code. It may also try civilians for espionage and treason; in localities where a "state of siege" exists, it may try them for all offenses which endanger the maintenance of order.

c. Appeal.—Appeal from a Military Court can in peacetime be carried to the Court of Cassation. In time of war, appellate jurisdiction is exercised by special military courts of cassation.

9. Administrative courts.

a. Explanation.—No feature of the French court system will be more confusing and yet more important for an Englishman or an American than the distinction between administrative courts and civil courts. The French administrative courts were established during the 1790's in order to free the Revolutionary Assembly from the restraint of the old *parlements*, which were distinctly royal and conservative in orientation. It was clearly an expedient to permit acts of the Government to be judged by courts friendly to the Government. As the French interpret Montesquieu's separation of powers in the government, it would be intolerable for the judicial arm to be able to annul acts of the legislative or executive branches. While this may appear to place the individual at the mercy of the state, the Frenchman has in fact had ample and prompt protection from unjustified acts by governmental officials. The administrative courts of the Third Republic conceived their role to be that of "the state's conscience."

b. Interdepartment Prefectural Councils.—The complaints of a citizen against what he feels to be excessive taxation would normally be brought first before an Interdepartment Prefectural Council (*Conseil de préfecture interdépartmental*). The Councils also hear contract and tort claims involving the public works of the prefectures. There are 22 districts for these interdepartmental bodies. The Prefectural Council is composed of a president and four counsellors, all of whom are appointed from among departmental officials by the President of the Republic.

c. Council of State (*conseil d'état*).

i. Composition.—The Disputes Section (*assemblée de contentieux*) of the Council of State is the supreme court of the French administrative law. It sits at Paris, in normal times, and has the same sphere of jurisdiction as the Court of Cassation; the whole French Empire. The Vice President of the Council of State is *ex-officio* President of the Disputes Section. In addition, there are presidents of subsections and a varying number of ordinary councellors, all appointed and removed by decree of the President of the Republic.

ii. Jurisdiction.—The cases which the Council of State hears cover a wide area and are of great importance. Considerable political importance is attached to the jurisdiction which it exercises in annulling the decrees and ordinances of the executive arm of government, where these officials have acted in excess of their power (*excès de pouvoir*) or, as American lawyers would say, *ultra vires.* Much more important in number of cases affected is the court's general jurisdiction of claims for misuse of power (*détournement de pouvoir*), or faults of administration (*fautes de service*). A merchant or contractor who would in the United States bring suit in the Court of Claims will in France present his request to the Council of States. So will a citizen who has been injured in an accident by government-operated automobile or locomotive. Since the French have adopted the theory that the government is responsible for the injuries it causes to its citizens, Frenchmen obtain relief in the Council of State which Englishmen or Americans cannot obtain in any tribunal.

During the first world war, Frenchmen who had damage claims against the British army were permitted to prosecute them in the Council of State courts as claims against the French Government, which assumed liability under a guaranty of reimbursement from Great Britain.

10. Court of conflicts (tribunal des conflits).—The duality of the French court system makes it inevitable that disputes as to jurisdiction should sometimes arise between the administrative courts and the ordinary civil courts.

a. Composition.—The Court of Conflicts is in the nature of an arbitral tribunal. It usually hears fewer than a half-dozen cases in any given year and is specially constituted for each separate case. The Minister of Justice presides. Under him are eight councillors, of whom three are from the Council of State's Disputes Section, three from the Court of Cassation, and the other two elected by these six.

b. Jurisdiction.—The Court of Conflicts decides any case in which a civil court has refused to relinquish jurisdiction to an administrative court. If a prefect feels that a case should come before a Prefectural council, but the District Court, for example, refuses to surrender the case, the Prefect may appeal to the Minister of Justice for the question to be settled by the Court of Conflicts.

11. High court of justice (haute cour de la justice).—When the Senate sits in a judicial capacity it assumes the name of High Court of Justice. There are two grounds on which a case may be sent to be tried before the Senate. On the one hand, the rank of the accused may require it. The President of the Republic, for example, cannot be tried for any offense except before the High Court of Justice. In other cases, the jurisdiction of the High Court is coordinate with that of the Court of Assizes. It may try ministers for felonies in office and may try anyone for bearing arms against the state. In practice, the High Court is little used. In 70 years it has conducted three treason trials, one ministerial felony, and no presidential offenses. In a relationship somewhat like that of the houses of Congress in impeachment proceedings, the Chamber of Deputies serves as grand jury or accusation chamber in cases where the Senate serves as court. Until the Chamber acts, exclusive jurisdiction of political offenders other than the president remains in the ordinary courts.

12. Summary.—Evaluating the court system of the Third Republic can best be done in terms of the opinions of the French themselves.

a. Criticisms.—French writers on legal organization before 1940 have repeatedly cited the following faults in their country's judicial institutions:

(1) The procedure in civil claims is slow, complicated, and expensive. In many important aspects it dates back to the instructions to judges issued by Colbert in the seventeenth century. Some justified suits are never brought to hearing because the plaintiff is discouraged by the costs and waiting which confront him.

(2) The French jury is too susceptible to emotional considerations and has failed to assure a uniform application of the law in the Courts of Assizes. It is proverbial that a jury in France will be harsh, often too harsh in trying offenses against property, yet will be sentimentally lenient toward crimes of passion and political crimes. There have long been a number of French lawyers who demand the abolition of the trial jury in favor of a panel of judges as found in the other courts.

(3) The composition of the Commerce Courts places businessmen in the position of deciding cases in the light of the technical complexities of the Commercial Code. The phrase "judgment by peers" has been ridiculed with a paraphrase: "judgment by competitors." Many commercial interests have been quoted as desiring Commerce Courts composed of disinterested lawyers in place of "merchants playing at judge."

b. Commendation.—There are, on the other hand, several features which have been consistently praised by both French and visiting students:

(1) The conciliation proceeding, which demands that a Justice of the Peace be permitted to attempt an out-of-court settlement in any civil dispute, has appreciably lightened the burden on the courts and has saved countless disputants the cost of formal hearings.

(2) The handling of criminal cases is extremely swift and efficient. The accused can be, and usually is, brought to trial within a few days of the initiation of proceedings.

(3) The administrative courts offer prompt and fair redress at no charge for the citizen's grievances against the Government.

B. Vichy and the Courts

1. General.—The government of Marshal Pétain has altered the framework of the old court system only slightly and in theory at least has destroyed no court nor legal institution of the Third Republic. It has been content with superimposing special courts and jurisdictions to implement the dictatorship and with suppressing the real function of some of the old courts. In addition to the existing courts and those it has created, Vichy has availed itself of extra-legal imprisonment. This so-called "administrative internment" is in fact a resurrection of the sinister *lettre de cachet* of the pre-Revolutionary monarchy. According to a decree published 4 September 1940, individuals considered dangerous to the national defense can be arrested by order of the Prefect and imprisoned indefinitely without preliminary hearing.

2. Modifications in previous system.—(1) The Council of State still has its Disputes Section. But there are no reports of cases annulling or even considering acts of Vichy officials as *ultra vires*, notwithstanding the disputable character of many of them. Apparently, the inhabitants of France recognize the futility of invoking the "state's conscience" at this time.

(2) The jury in the Court of Assizes is no longer allowed to deliberate in privacy. Instead, the jury and the judges now confer as a committee to determine both the facts of the case and the sentence to be imposed. Hence Vichy's control of the magistracy carries with it control over juries as well.

(3) The suspension of the Houses of Parliament has automatically dissolved the High Court of Justice, which consisted of these bodies.

3. Vichy additions to court system.

a. Supreme Court of Justice (*cour suprême de la justice*).—In July 1940, only a few days after he assumed complete power, Marshal Pétain decreed the formation of the Supreme Court of Justice. He appointed five judges, provided the necessary secretariat, and assigned the Court a special prison for the execution of its sentences. The court sat at Riom. Its specific task was to try those ministers and their associates who were charged with having led France into war with Germany, and also to try some of these same men on charges of corruption and malfeasance in office. The trials, which involved, among other things, Messrs. Blum, Daladier, Mandel, and General Gamelin received a great amount of publicity which proved to be extremely unfortunate for Vichy. Blum, in particular, but also Daladier and the others, took advantage of the chance to speak from the stand; their comments amounted to a ringing denunciation of fascism and of many men high in the new Government. The Court has become a dangerous sounding board, and in the spring of 1942 Germany and Vichy agreed that the long-drawn proceedings should be suspended. Fourteen months later, in June 1943, a decree dissolved the Supreme Court of Justice, officially ending the Riom trials.

b. Council of Political Justice (*conseil de la justice politique*).—The failure of the Riom Court was apparent almost from its first sessions. The Chief of State still lacked a direct and easily controlled means for authorizing action against the highest political enemies of his regime. To provide this legalistic cloak, the Council of Political Justice was created in August 1941. The Council, which was made heir to the records assembled by the Supreme Court of Justice (then still in session), consults with the Marshal regarding sentences to be passed upon high officials who have held office within the 10 years prior to August 1941. The composition and procedure of the Council have never been defined. Actually, it does not sit as a court nor does it exercise an independent judicial function. In the main it appears only to furnish support for executive orders; and under this arrangement Pétain has pronounced several life sentences against political figures of the Third Republic.

c. State Tribunal (tribunal d'état).—A decree of September 1941 created the State Tribunal to try "all those actions liable to cause disorder, to bring about breaches of the peace, to disturb international relations or in any way be harmful to the French people." Such a vaguely defined jurisdiction obviously overlaps the provinces of several other courts. If the Government so chooses, a case may be lifted out of any other court, even while hearings are in progress, and assigned to the State Tribunal. The two divisions of the Tribunal, one sitting at Paris, the other at Lyon, have to date been occupied almost solely with the more serious black market offenses, especially ration card forgeries.

d. Special Criminal Court (cour criminelle spéciale.)—For a short period extending from March 1941 until November 1941, the Special Criminal Court tried black market and hoarding cases. After 8 months of activity it was suppressed in favor of the State Tribunal.

e. Special Sections within Court of Appeals.

i. Court for Night Offenses (tribunal des infractions nocturnes).—Created in May 1941, the Court for Night Offenses in each appeal district tries misdemeanors and felonies committed during the blackout. Its procedure is very rapid: Trial must follow apprehension within 8 days, and judgment must be delivered within 10 days of the opening of proceedings. There is no appeal from its decisions, which are immediately enforceable.

ii. Sections to Try "Communists."—Each Court of Appeals in the Occupied Zone, prior to November 1942, had a special section to hear cases involving actions by "Communists" and "anarchists" especially assaults upon German soldiers. In the former Unoccupied Zone, Military Tribunals were empowered to declare themselves Courts-Martial to hear the same category of cases. When the Germans occupied the rest of France the use of the special sections of the Courts of Appeals was made uniform for the entire country.

f. Court-Martial of Gannat (cour martiale de Grannat).—A law of 24 September 1940 established the Court-Martial of Gannat to try de Gaulle accomplices and sympathizers both inside and outside France. It was suppressed in November 1941, after having passed a number of death sentences *in absentia* upon Free French leaders, including General de Gaulle himself. Apparently Vichy felt that in 14 months the Gannat Court had achieved its purpose of outlawing Resistance leaders at home and abroad.

g. Special Courts-Martial (cours martiales spéciales).—The most recent addition to Vichy's group of special courts is the crop of courts-martial which a decree issued in January 1944 empowered the Secretary-General for the Maintenance of Order (*secrétaire général chargé du maintien de l'ordre*) to create. A Court Martial is brought into being by the appointment of three judges to try acts of terrorism. It has no rules of procedure beyond its instructions from the Secretary-General. All existing laws are suspended in their application to its deliberations and its sentences are immediately enforceable, without appeal. The formation of this group of courts-martial was apparently another step in the futhless program of increased suppression inaugurated by the new Secretary-General Darnand.

h. Summary.—The policy of Vichy with regard to the courts has been to destroy the independence of the judiciary (see below "The Judges") and to establish certain puppet courts, but not to abolish the machinery of the Third Republic. Vichy has suppressed some of its own courts: The Supreme Court of Political Justice because its proceedings were proving embarrassing to the government, the Court-Martial of Gannat because it had served its purpose, and the Special Criminal Courts because their jurisdiction had become superfluous. Even so, considerable confusion still exists as to the clear line of jurisdiction in many cases. Apparently the choice of which court will try a case of opposition to the Germans or the Pétain regime rests largely with the Government itself. The State Tribunal, the special sections of the Courts of Appeals, and the drumhead courts-martial most recently set up, all have as their avowed purpose the suppression of political opposition to the government and acts of hostility toward the occupying forces. Even the Courts for Night Offenses, which would appear to be less political than the other, have instructions to consider the race and personal opinions of defendants when passing sentence upon them.

C. Problems of Reorganization

That there were weaknesses in the system under the Third Republic, as in any nation under any government, the French themselves would be the last to deny. But it would be difficult for an observer not a native of France to suggest features of the pre-war system which ought to be abolished or altered, nor are such recommendations necessary. The French have a clear set of theories regarding reforms of the courts, and the end of German domination will surely bring a number of changes, as for example, a simplification of procedure in civil suits.

As for the changes Vichy has made, an early abolition of the new courts is to be expected. A democratic administration has no need of a Council of Political Justice. Authorities with popular support need not employ extraordinary courts-martial. The special sections of the Courts of Appeals operate on a basis representing the worst in administrative domination of the judicial arm. (It is reported that no decision is reached in these sessions without first submitting the dossier to Vichy for instructions.) Even the State Tribunal and the Special Court for Night Offenses, while they may serve a necessary purpose in handling cases arising out of wartime conditions, carry a stigma of association with the Pétain Government and with Germany which all but eliminates their usefulness in a liberated France. The reaction of the populace would inevitably be bitter toward an attempt to continue in operation any tribunal established since June 1940. Even though the objectionable elements in the court personnel be purged in favor of truly republican judges, the very names of these Vichy courts would excite repugnance in the French people. It appears doubtful whether the High Court of Justice will be reconstituted immediately after the liberation, since that would require reassembling of the Chamber of Deputies and of the Senate in their pre-war functions.

The legal aspects of abolition of the Pétain regime's courts will be determined by what policy is adopted by the civil authorities with regard to the whole body of Vichy legislation. If there is a blanket annulment of all decrees of the Chief of State and of all directives of his ministers, then the new courts will be automatically dissolved. Their authorization for sitting will have vanished. If, on the other hand, the legislation since the Armistice is dealt with point by point, each of the Vichy courts will have to be removed by *ad hoc* action of the duly empowered French authorities. Whatever mechanical means are adopted, the abolition of fascist vestiges must be the immediate goal of any reform of justice. Until the Vichy machinery has been destroyed in fact and removed in form, it will be impossible for the Frenchman to believe that Freedom has returned to the courts of his land.

III. THE JUDGES

A. Under the Third Republic

1. Nonprofessional judges.—Several French courts employ panels of men who perform the function of judging disputes, but who do not make this their profession, nor possess any specialized training for it. The Prudent Men's Councils are composed of employers and employees in industry, commerce, or agriculture. The Commerce Courts are made up of businessmen. Army and navy personnel sit in the Military Tribunals.

While there is no pronounced distrust of nonprofessional judges, they have not commanded the high respect of the professional judiciary. The commercial judges have been charged with deciding cases according to recommendations of chambers of commerce rather than according to the legal principles. There is a considerable opposition among Frenchmen to military judges, and their jurisdiction was considerably curtailed by the new military code of 1928. When workmen's compensation laws were enacted, their administration was entrusted first to the District Civil Courts and later to the Justices of the Peace, rather than to the Prudent Men's Councils.

The membership of the Council of State is partly composed of qualified lawyers, and partly of nonprofessionals. The law members must pass a difficult qualifying examination. The decisions of the Council have set a high standard of judicial statesmanship and have won for it a high degree of public esteem.

2. Justices of the peace.—At the birth of the Third Republic, the Justices of the Peace held a position in the public regard comparable to that of the corresponding officials in the United States. Most of them had no knowledge or training in legal principles. They were removable at will by the Minister of Justice and were consequently subject to political influence.

Since 1870, the Justices have climbed steadily in terms of responsibility and popular respect. Under successive changes in the law, culminating in 1926, new appointees must now be nearly as well qualified as the judges of the District Courts. They must be legally trained, have 2 years' professional experience, and pass a special examination for their position. Although their salaries are still low, their tenure of office is substantially secure during good behavior. They appear in court with judicial robes and deliver written judgments like the judges of the higher courts, some of which are published in reports.

Accompanying an augmentation of the dignity of Justices, there have been gradual accessions to their jurisdiction. Not only have the monetary limits of their competence been increased to keep step with the depreciation of the franc, but many special subject matters have also been directed to their courts. In 1938, they were given cognizance of workmen's compensation and social security claims. Adequate review of their decisions was assured by entrusting it, with other matters of special significance, to the new Social Chamber of the Court of Cassation.

3. The higher judiciary.—The judges of the magistracy constitute the real core of the French judiciary. Called the "seated magistracy" (*magistrature assise*), as opposed to the "standing magistracy" (*magistrature debout*)—which includes the active lawyers of the Public Ministry—these higher judges possess both education and a high degree of group integration. The seated magistracy is composed of:

1. District Court judges.
2. Court of Appeals judges.
3. Court of Assizes judges (drawn from (1) and (2)).
4. Court of Cassation president and councillors.

Since the magistracy is a profession, an organization with rules and traditions, it is the most significant portion of the judiciary. It is articulate, and the voice of the "judges" has, on occasion, been a significant force in the government. When a French writer mentions the magistracy, he means the superior judiciary unless the term is specifically broadened to include the Justices of the Peace and the personnel of nonprofessional categories. Thus the French *magistrats*, who stand at the top of their judicial hierarchy, are the opposite of American "magistrates," who stand at the bottom of theirs.

a. Requirements for Entrance.—The French law student makes a choice at the very beginning of his career between a career in the magistracy or a private practice. If he decides to try for the magistracy, he must first obtain his certificate in law (*license en droit*) at the completion of a 3-year course. Then he spends 2 years apprenticed to one of the advocates at a Court of Appeals. This training period completed, he may take the entrance examination for the magistracy. From the results of this examination additions are made to the list of eligibles for appointment to the bench. Once his name is inscribed upon this list, the aspirant is on the threshold of actual appointment to the position of subordinate judge of a District Court.

b. Promotion.—Once established, the judge is secure for life unless convicted on a criminal charge. The only discipline to which he is subject is at the hands of the Court of Cassation, sitting as a supreme court of the magistracy. He is, however, poorly paid by British or American standards, nor does his income compare favorably with that of a French lawyer with a good private practice. Therein lies the chief limitation on the judge's theoretical independence. In order to reach the higher income grades he must remain in favor with the Minister of Justice. Promotions are made from a list of eligibles prepared by a selection committee drawn from the Court of Cassation. But it is still the Minister of Justice who chooses those to be promoted from among the names on the list. Consequently, a judge cannot hope to rise from a District Court to a place on a Court of Appeals, must less reach the coveted heights of the Court of Cassation, unless he holds the good will of the Minister.

c. Social Position.—The French judge moves in an atmosphere of convention and etiquette which surrounds his position with great social prestige. In court his robes and his stiff, flaring toque symbolize the deference accorded him by the rest of the legal profession on the one hand and other government officials on the other. A good example of judicial etiquette is the formal exchange of courtesy calls which accompanies the judges' arrival in a town for a session of a Court of Assizes. Formality and professional discipline are the outstanding characteristics of the magistracy as a body.

B. Judges under Vichy

1. Initial removals.—The Pétain regime began its assault upon the independence of the magistracy within a few days after the Marshal assumed unlimited power on 10 July 1940. Large numbers of judges have been dismissed and many of these were also arrested. Some of these men were Jews, others were Free Masons, others were suspected of Communistic, pro-British, or Gaullist sympathies.

2. Replacements.—Finding substitutes for all those magistrates who were ousted would have been impossible under the normal procedure for appointment and promotion. As a result, the standards have been relaxed until now a judge who is recognized for his docility to Vichy directives can be promoted without even being on the list of eligibles. While it is not true that there has been anything like a complete overturn of the magistracy in favor of pro-Vichy judges, it is certain that all of the newer appointees hold political views which make them useful cogs in a totalitarian regime.

3. Subordination to instructions.—The judges have been repeatedly informed that judgment is no longer simply a matter of the facts and a just decision. The security of the State must transcend either of those considerations. The Chief of State issues memoranda to the courts and has further instructed them to abide by directives from the various ministers of the Cabinet. In some cases no judgment can be rendered until the dossiers have been submitted to Vichy and instructions as to punishment issued by the Government. Offenses involving Germans must be judged "for policy reasons, with due regard for the nationality of the parties." If the Government orders a case transferred to a German military court or, for example, to the State Tribunal, the ordinary court must accede with as good grace as possible.

4. Instances of defiance.—Some of the judges have clung staunchly to republican views, to the point of bringing about their own dismissal, which inevitably carries with it the threat of further punishment. M. Paul Didier is an example. On 3 September 1941, at a meeting of the magistracy of the Paris region, called for the purpose by the Minister of Justice, Didier refused to swear allegiance to Marshal Pétain. A decree promptly deprived him of his seat on the Paris Court of Appeals. There has been a recurring tendency on the part of many of the courts to pass lighter sentences upon political prisoners and captured members of the Underground than Vichy finds pleasing. The controlled press has frequently castigated the magistrates for leniency and has often succeeded in obtaining harsher judgment. The Underground, on the other hand, has assassinated judges who seemed to be following orders of the Government with too much enthusiasm.

C. Restoration

Eradicating the controls over the judges themselves is obviously necessary to remove the traces of tyranny from the court system as a whole. To dissolve the Vichy courts will not restore republican justice to the citizens. They will be watching to see that collaborationist appointees among the magistracy are ousted and to be assured that judges who kept faith with the ideals of an independent judiciary are reinstated.

The members of the French magistracy are conscious of a distinct *esprit de corps*. The records of the professional body will make easier the task of evaluating individual judges. The praise or censure of their own colleagues will be an important criterion in sorting out the collaborationists. But equally important will be the opinion of the populace in general. The judges of a restored republic will have to hold the respect of the citizens they judge; and only men who have not pandered to the occupation authorities can hope to merit that respect.

IV. LEGAL PROFESSION

A. Organization

In America, the legal profession means the bench and the bar, of which the bar is a diverse group including government lawyers and private lawyers, trial lawyers and office lawyers, practising lawyers and lawyers employed in business or public administration.

In France, the division is completely different. The legal profession is divided into the magistracy (*magistrature*) and the auxiliaries (*auxiliaries*). The magistracy are those members of the profession in public office—not only the judges, but also the attorneys-general, the district attorneys, and their staffs. The judges, or "bench" in American parlance, are called the "seated magistracy" (*magistrature assise*). The government lawyers are called the "standing magistracy" (*magistrature debout*), or the "parquet." This latter word means literally the floor of the court, between the raised dais of the judge in front and the raised seats of the spectators behind, where these lawyers formerly stood in the conduct of a case. Similarly, American lawyers are called the "bar" because they traditionally stand just before the "bar" which separates the judge from the rest of the courtroom. The remainder of the legal profession, who belong to neither branch of the magistracy, are the "auxiliaries." They include all the various kinds of private legal practitioners, and also the clerk and the process-server (*greffier* and *huissier*) of the court. Only one small segment of these auxiliaries is called the "bar" (*barreau*).

1. The parquet.—The parquet corresponds in function to our attorney-general's and district attorney's offices. Each District Court has its parquet headed by the District Attorney (*procureur de la République*), and staffed with his Assistants (*substituts*). Above these are the Courts of Appeal, each with its Attorney-General (*procureur-général*) and his Advocates-General (*avocats-généraux*). The highest parquet is attached to the Court of Cassation, where there are also an Attorney-General and Advocates-General.

But the differences between the parquet and the corresponding American offices are more important than their likenesses. The first is that suggested by one of the parquet's names—the "standing magistracy." The members of the parquet are on a par with the judges; members of the standing magistracy, or parquet, are frequently transferred to positions in the seated magistracy, or bench, and may in due course be transferred back again. Both bench and parquet are under the Minister of Justice, who awards promotions in both branches. The tenure of judges, and the requirement of selecting candidates for promotion from a recommended panel do not apply to positions in the parquet, but the practical differences in promotion or demotion are not great. The nearly judicial standing of the parquet is emphasized at court sittings, for a member of the parquet sits with the judges, occupying the seat at the extreme right of the bench, as seen from the courtroom.

The other important difference between the parquet and American government lawyers is suggested by a third name which is applied to it—the public ministry (*ministère public*). This is a deceptive name, since it suggests that the parquet is a department of the national government, like the ministry of labor. On the contrary, the parquet is a group of people within a department—the Ministry of Justice. But the name of "public ministry" serves to emphasize the fact that the parquet is a career of public service, wholly separate from the private practice of law. A private lawyer does not run for District Attorney, serve a short term, and retire to private practice for 10 years until he is ready to run for Judge. Once he has entered private practice, he can never enter the parquet except by withdrawing entirely from practice, and starting as a novice at the bottom of the parquet. And a member of the parquet cannot lightly step out and begin the practice of law. He does not even belong to the same profession. A civil servant he is and must remain, and his only hopes of progress are upward through the parquet, or to the bench.

2. Advocates (the "bar").

a. Functions of advocates.—The one small group of men in the French legal profession who are properly called members of the "bar" are the advocates, and it is to this group that travelers who report on the French bar usually devote their attention.

The work of a member of the bar of the District and Appeals Courts has only a fraction of the scope of an American lawyer's; it is even more restricted than an English barrister's. Such an advocate's work is simply advocacy—making oral arguments (*plaidoiries*) for his client before the judges. He does not necessarily advise his client whether to sue or not to sue; that may have been decided by the solicitor, who alone can institute suit in the Civil Tribunal. He does not "represent" his client in the sense of receiving service of papers, or filing those documents which determine how the case will be defended, nor does he draw these documents. As a conseqence, the advocate has little need of an office; he maintains a reception room at his home, but spends nearly all day at the courthouse, like a busy American trial lawyer in term time. Even at the hearing, the advocate does not "try" the case like an American trial lawyer, or English barrister, since examination of witnesses does not usually take place at the hearing; if it does, it is conducted by the presiding judge. In criminal matters, however, where a solicitor is not required, the advocate plays an important role as counselor, as he may also in some civil cases.

b. Position of the bar.—The reputation and dignity of the French barristers depends primarily upon their excellence in oral argument. Most of it is directed to the judges, as in American appellate courts. But in the Court of Assizes, where felonies are tried, impassioned appeals to the sympathy of jurymen recall the drama of an American courtroom. The same talents of persuasion which make French advocates successful in their profession tend to make them successful in the political field. It is from the advocates that France's many lawyer-statesmen have come. In the courtroom the advocate is a distinguished figure, wearing a black robe and tocque similar to that of the judges, with the addition of a sash or "hood," trimmed with two rows of ermine, hanging from the left shoulder.

A discipline far more exacting than that of any American bar, and perhaps more than that of the English barristers, is maintained by the bars of the respective courts. Admittance to the bar is granted only after receipt of a law diploma and completion of a stiff examination. Once a member of the bar, the advocate is precluded from supplementing his income through any other trade or business, and even from forming any partnership with another advocate. He may, however, enter politics. The most serious accusation made against the bar of the Republic involves the use of political influence on judges by a few lawyer-politicians. Proposals have been advanced for separating the practice of law from politics.

The bar of the district courts and the courts of appeal is distinguished from all other branches of the legal profession in that it can be entered by anyone who can pass the necessary examinations. It contrasts with the magistracy on the one hand, where admittance is obtained only through an appointment by the Minister of Justice, and on the other hand with other branches of the legal profession, where the aspirant must buy the office or practice of a previous holder. The venality of office applies also to the bars of Court of Cassation and of the Council of State, although not to the bars of the lower courts.

3. Solicitors.—The lawyers who do much of the formal work which engrosses an American lawyer engaged in litigation are the solicitors (*avoués*). It is they who technically "represent" their clients, filing suits or defenses to suits, and preparing the formal written statements which correspond to the "pleadings" of common law courts. Only the making of oral arguments in court is left to the advocates.

The solicitors, like the advocates, have their local organizations to verify the qualifications of their members, but their requirements are far less strict. An applicant must have attended certain law courses but need not have obtained a diploma. He obtains his practice by buying it from a predecessor, since the number of members is limited. This fact gives a sort of monopoly to solicitors, since litigants in the District Courts and the Courts of Appeal have no choice but to be represented by a client who is not introduced by a solicitor, a solicitor must be retained if the case is litigated in the District Civil Court, or the Court of Appeal. A solicitor is, therefore, likely to be the first person consulted, and to advise extensively; while an advocate may not be retained at all, if the case is settled before hearing.

Outside the District Courts and the Courts of Appeal, the solicitors have little practice. Neither solicitors nor advocates are required in the Justice of the Peace courts, the Prudent Men's Councils, or the Commerce Courts. In the administrative courts and in the Court of

Cassation, there are no solicitors, since the advocates perform the functions of both written and oral representation. As the jurisdictions of the Justice of the Peace courts and administrative tribunals expand, the solicitors handle a smaller and smaller proportion of all legal business. At the same time, procedural reforms are reducing the importance of formal pleadings even in the courts where solicitors are required. Some French critics, therefore, consider the solicitor an anachronism.

4. Commercial lawyers.—In the commerce courts, representation is not required, either by solicitors or by advocates, although both may take cases there. A group of practitioners has grown up, however, who are registered with the courts and have an association for disciplinary and other purposes. These are the commercial lawyers (agréés). They are not required to be learned in the law, and are hardly "lawyers" at all, but the work they do would be done largely by commercial lawyers or perhaps collection agencies in the United States.

5. Notaries.—The French notary (*notaire*) plays a vastly more important role than his American counterpart. Like the latter, he holds a license from the government to exercise his provision, and he is needed to certify the execution of certain types of deeds and contracts. But he does not merely certify signatures. He drafts the deed or contract, and assures himself that the signer understands and assents to all its provisions. He sees that the necessary stamp taxes and transfer taxes are paid, and that the document is properly filed in official records. The totality of his services are comparable to those of an English conveyancer, or of an American lawyer specializing in real estate or corporation practice, and his fees are substantial. The number of notaries, like the number of solicitors, is limited. Since they have a legal monopoly in the preparation of certain types of documents, many notaries earn large incomes. Although the formal requirements for entering the notarial profession are lower than for advocates, many notaries are men of high professional attainments.

6. Consultants.—Since the French legal profession is broken up into so many segments, hardly anyone is in a position to advise broadly on a problem having many aspects. The advocate is undoubtedly regarded as the most reliable source of counsel, but he is not allowed to draw contracts or deeds (these being functions of the notary), nor pleadings for litigation (the prerogative of the solicitor). The solicitors and notaries likewise tend to have practices restricted to the particular functions they are licensed to perform.

Under these circumstances a profession of "consultants" (*conseillers*) has developed, simply to advise.

These men are registered on no roll, have no disciplinary associations, and vary from individuals of very little importance to some with large and lucrative practices. Generally speaking, they have no formal legal training. They are frequently designated "financial consultants," "commercial consultants," and the like. Collectively, they are sometimes called "men of affairs" (*hommes d'affaires*). There does not seem to have been, as in the United States, any movement to treat these advising laymen as unauthorized practitioners of the law.

7. Court clerks.—It is probably shocking to most Americans to find a court clerk described among the private practitioners of the law. Although there is generally a small salary attached to the office, a more important part of its emoluments come from the fees paid by litigants who file documents. A somewhat similar fee system persists in some American jurisdictions. What characterizes the clerk most distinctly as a practitioner rather than a public servant is that he buys his office from a predecessor, like the solicitor or notary, rather than receiving it by election or appointment. No legal training is required, although an examination must be passed.

The duties of the clerk are to attend court and make minutes of the proceedings (there is no stenographic record). There are also several occasions, principally in criminal procedure, where a judge leaves the courtroom to observe the scene of a crime, or to interrogate witnesses, or where a judge interrogates witnesses in chambers. Here again, the clerk takes minutes.

8. Bailiffs.—The service of formal notices, summons, and arrests devolves in France upon the bailiff (*huissier*). Unlike sheriffs and constables, who perform similar functions in American courts, he is not a peace officer. He mixes the functions of a tipstave and court crier within the court with functions of a process-server outside. In fact, his French designation (cognate with "Usher") suggests that his indoor functions were originally the more important. He too buys his office, which may be quite lucrative in the larger courts.

B. Effects of Vichy on the Legal Profession

1. Formal attacks.—The Vichy government has had severe effects upon the legal profession. It ordered the exclusion from the professions of Jews, Free Masons, and foreign-born practitioners. Conversely, it restored to membership in the Paris bar at least one advocate who had been expelled in 1937 for anti-Semitism.

At the same time, Vichy laws reduced the legal requirements for admittance to the French bar, permitting, among other things, the substitution of war service for formal training. It also permitted solicitors to present arguments in criminal cases—a function formerly reserved, with few exceptions, for advocates.

Finally, a sweeping series of laws and decrees issuing from the chief of state reorganized the professional associations of the solicitors, commercial lawyers, notaries, clerks, and bailiffs. The precise effect of the new decrees is not readily discernible, but the new organizations appear to be more tightly organized, with more direct responsibility to their higher officers and to the state.

2. Undermining the profession.—But the most profound effects of Vichy upon the legal profession have not resulted from these formal attacks. They have flowed from the undermining of the administration of justice. All property is insecure because of public disorder, and because all of it is likely to be seized for real or imaginary offenses against the government by dealing in black markets or aiding the underground. Consequently, there is little reason for ordinary civil suits and civil practice has shrunk tremendously. For a time there was a tremendous growth in criminal practice, but the creation of extraordinary courts which give no time for defense has probably made criminal defense equally futile. Certainly this must be true since the widespread resort to courts martial. Even before this procedure, the right to choose one's own counsel had been taken from persons accused (though not yet convicted) of communist or anarchist activities.

Vichy justice has left no place for the functioning of private lawyers. As for the government lawyers of the parquet, their ranks have been subjected to the same sort of purging of democrats which has run through the judiciary and the entire civil service.

C. Problems of the Liberation

Since reoccupation naturally aims at the restoration of normal civil and criminal processes, and these can function only through the legal profession, the restoration of the profession to a healthy state will be an early objective of any liberation movement. To some extent, restoration of law and order will automatically permit members of the legal professions to resume their normal pursuits. But restoration of those who have been arbitrarily expelled from the associations should follow almost immediately, not only for the correction of personal injustices, but also to restore to the profession many of its most patriotic members.

A more delicate question will be presented with respect to those members who have been admitted to the profession during the Vichy regime. Where they have been admitted for specific purposes at German instigation, the problem is one of the treatment of collaborationists, and need not be touched here. In the case of ordinary citizens who have qualified in the usual way, their admittance should probably be confirmed by act of the proper court or professional organization. In the case of ordinary citizens who have qualified in the usual way, their admittance should probably be confirmed by act of the proper court or professional organization. In the case of citizens who have been admitted under relaxed requirements, the balance between permissible sympathy for men whose training was interrupted by the war, and a desire to maintain professional standards, is probably best left to the professional organizations themselves.

The problem of the reorganization of professional organizations, other than that of the advocates, is difficult to evaluate. Commentators before the war left little doubt that discipline and organization were somewhat lax in these groups. Although the more centralized organization was doubtless useful to a collaborationist government which wished to tamper with personnel, it might also be a sound organization for self-discipline in a period of restored national freedom. On the whole it would seem wise to let the reorganized organizations continue in their present form (possibly after permitting new appointments or elections of officers), unless they themselves recommend a return to their former status.

V. FRENCH CRIMINAL JUSTICE

A. Steps in Prosecution and Punishment

As in the United States, officers of the police are relied on to apprehend criminals and bring them before the authorities of justice. But from this point, nearly every part of the procedure differs significantly from the corresponding American process.

1. Preliminary hearing.—The American procedure of bringing every arrested suspect before the Police Court or Justice of the Peace is not followed in France. Only the pettiest offenses can be handled in this way. Consequently, it is necessary to determine before the suspect is brought before any judge the grade of offense for which he is to be prosecuted. Usually the District Attorney steps in at this point and directs the course of prosecution.

a. Grades of Offenses.

i. Felonies (Crimes).—French law, like British and American, recognizes a separate class of infractions made up of such violent offenses as murder, mayhem, robbery, and burglary, together with other offenses which merit equally severe punishment. Five years' imprisonment, or more, marks the line of demarcation of these violations of law, which correspond in a general way to "felonies" in the common law system. In French they are called *crimes*, and that term is never applied to offenses of a lesser grade. The proper French word to designate all grades of public wrongs is the same as the English—*offenses.*

ii. Misdemeanors (Délits).—Next below the felonies the French recognize a grade of offenses much like the "misdemeanors" of American law. They are called *délits*—an unfortunate word because it is sometimes used to signify all offenses against the state, and in another connection to signify private wrongs against individuals, like the English word "torts." But in its stricter connotation the French "misdemeanor" excludes felonies and also the lowest grade of offenses, called "contraventions." Typical misdemeanors are assault and battery, or theft, when not aggravated by additional circumstances. But theft by force of arms or by breaking into a building at night, is a felony.

iii. Contraventions.—The lowest grade of offenses against the state is one for which no name exists in the English common law, although the need for a separate category has often been noted. These offenses are called "contraventions." Any offense for which the penalty cannot exceed 15 francs or 5 day's imprisonment falls in the contravention category. Most contraventions consist in maintaining nuisances, blocking the highways, and the like.

b. Direct Citation for Trial.—If the offender is accused only of a contravention, he will be sent directly to the Police Court (*tribunal simple de police*), where he will be fined a few francs or jailed for not over 5 days. This is much like the summary jurisdiction exercised in America by Justices of the Peace, except that the penalties which can be summarily imposed are much lighter.

If the suspect is accused of a misdemeanor, he does not go to the Police Court at all. When the misdemeanor is a minor one, and the proof so clear that further investigation is unnecessary, the District Attorney will normally cite the case directly to the District Criminal Court (*tribunal correctionnel*) for trial. This court may sentence the offender to as much as 5 years' imprisonment. Yet it may proceed without any preliminary hearing having been held or any official investigation of the proof of guilt prior to trial. It employs no jury and frequently hears no witnesses except the accused himself, proceeding on the minutes of investigation (*procès verbaux*) prepared by the police or District Attorney. If there is any other inquiry into the proof of guilt, it is merely an unofficial inquest (*enquête officieuse*) made by the District Attorney before citing the case for trial.

c. Examining Judge (Juge d'Instruction).—The procedure of a preliminary hearing is reserved in French law for felonies and for misdemeanors of more than usual gravity or complexity. These cases are ordinarily referred by the District Attorney to the Examining Judge. In cases where the offender is apprehended either in the offense or very shortly afterward, the offense is then said to be a *crime flagrant*, or *délit flagrant*.

The French preliminary hearing is a substantially different thing from the American. The Examining Judge is not a Justice of the Peace, but a member of the bench of the District Court or of the parquet. Unlike a common law Justice, he does not confine himself to determining whether the evidence presented constitutes "reasonable and probable cause" for holding the defendant. He has no obligation to dismiss him if it does not. On the contrary, it is his business to launch an investigation of his own into the probable guilt of the accused and to hold him during the time necessary to complete the investigation.

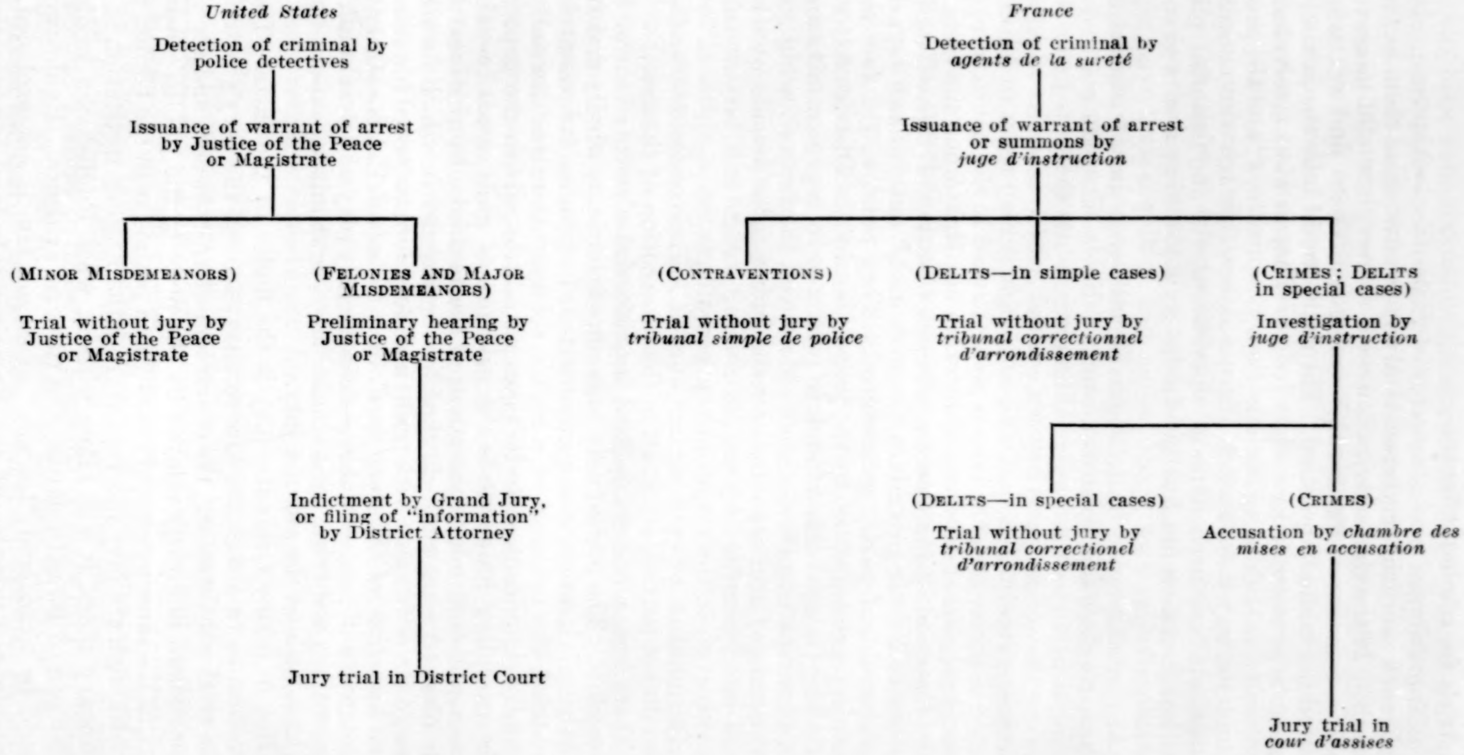
On completing his inquiry, the Examining Judge refers the case directly to the District Court for trial, if a misdemeanor is indicated, or to the Chamber of Accusation, for further investigation and review, if the evidence points to guilt of a felony. The latter alternative may be compared with "binding over" to the grand jury by an American Justice of the Peace.

2. Indictment: The accusation chamber (chambre des mises en accusation).—The Accusation Chamber is the nearest correlative in French criminal procedure to the common law Grand Jury. After a short experiment with a grand jury of laymen during the Revolutionary period, the French abandoned it and returned to professional judges. The high judicial rank of its members is striking, since the presiding Judge must be a member of the Court of Appeal for the region and the two associate judges may come either from the same court or from the District Court.

Like the common law grand jury, the Accusation Chamber decides whether the evidence is sufficient to merit a trial and makes the formal charge or indictment on which the accused is tried. It also has powers of investigation, although it generally finds that much of the work has already been done by the District Attorney in his unofficial inquest, or by the Examining Judge, who is definitely charged with that duty. If the Accusation Chamber finds evidence of felony meriting a trial, it forwards its indictment to the Court of Assizes; otherwise it may relegate the case to trial in the District Court (for misdemeanors) or Police Court (for contraventions), or may dismiss it entirely.

3. Chart.—A chart is attached, summaring the typical steps of French procedure leading to trial with a comparison of the commonest elements of procedure in the United States. It is of course highly simplified, and ignores possible variations in practice.

CHART OF TYPICAL PROSECUTION OF CRIME IN FRANCE AND IN THE UNITED STATES


United States
Detection of criminal by police detectives
Issuance of warrant of arrest by Justice of the Peace or Magistrate
(MINOR MISDEMEANORS)
Trial without jury by Justice of the Peace or Magistrate
(FELONIES AND MAJOR MISDEMEANORS)
Preliminary hearing by Justice of the Peace or Magistrate
Indictment by Grand Jury, or filing of "information" by District Attorney
Jury trial in District Court
France
Detection of criminal by *agents de la sureté*
Issuance of warrant of arrest or summons by *juge d'instruction*
(CONTRAVENTIONS)
Trial without jury by *tribunal simple de police*
(DELITS—in simple cases)
Trial without jury by *tribunal correctionnel d'arrondissement*
(CRIMES; DELITS in special cases)
Investigation by *juge d'instruction*
(DELITS—in special cases)
Trial without jury by *tribunal correctionel d'arrondissement*
(CRIMES)
Accusation by *chambre des mises en accusation*
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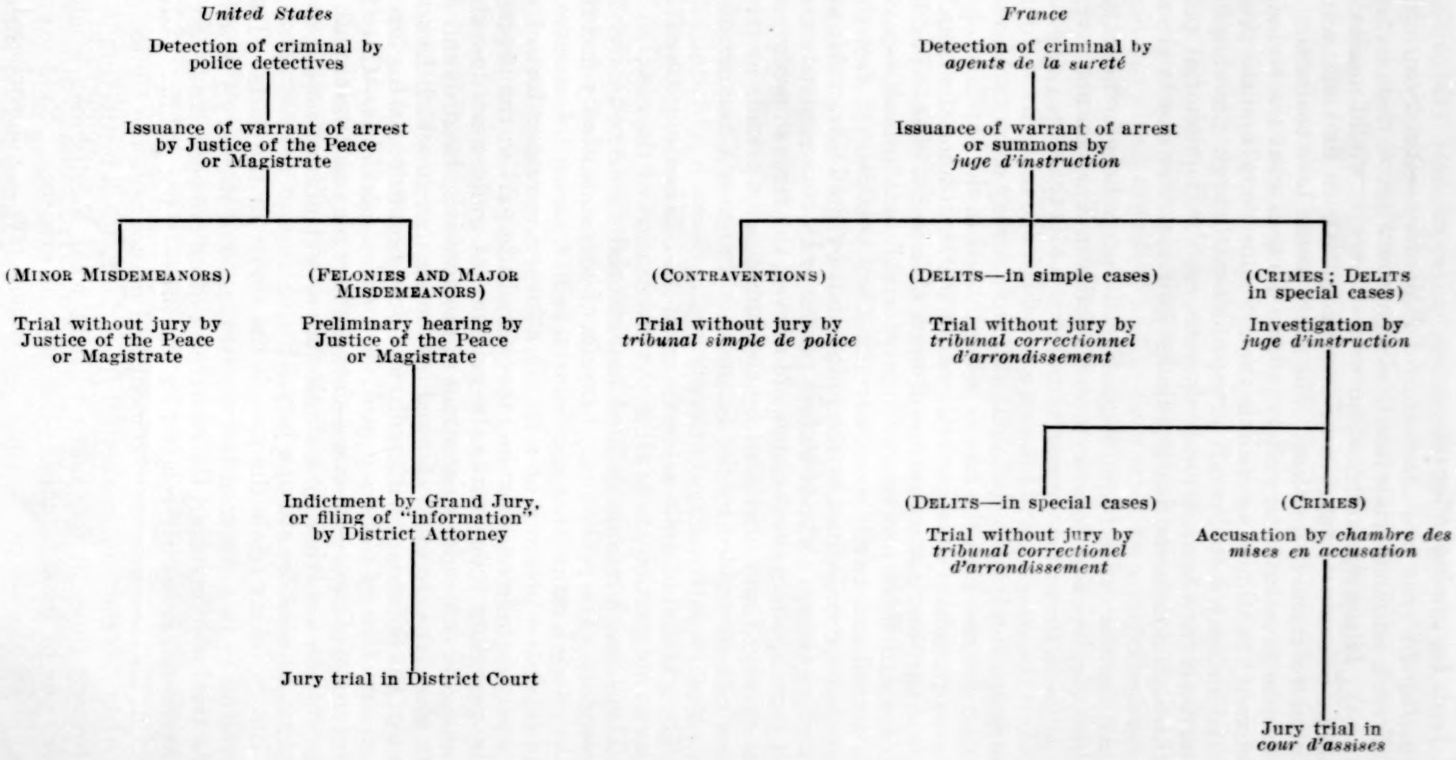
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Accusation by *chambre des mises en accusation*
Jury trial in *cour d'assises*

4. Trials for criminal offenses.

a. Inquisitorial and Accusatorial Procedure.—American observers of French criminal trials nearly always characterize them as "inquisitorial." If the characterization were correct, it would mean that the court's function is "inquiring"—investigating to find out who committed the crime in question. The court would take the initiative and would be prosecutor as well as judge. That is what the ecclesiastical courts of the Middle Ages did in their "inquisitions" and the procedure found its way into French jurisprudence through the church. An American "coroner's inquest" operates on the inquisitorial principle (although it does not finally adjudge guilt), and so does a grand jury investigation.

At the other pole from "inquisitorial" procedure is "accusatorial," which English and American courts follow. They do not investigate or inquire; they sit as impartial umpires, while the state makes its case against the accused, and his own counsel tries to rebut it. Seldom does the judge interpose a question, although it may seem to an unaccustomed observer that the case is going to seed in the hands of opposing attorneys, neither of whom is throwing any light upon the facts.

b. Function of the Court in French Criminal Trials.—The French do not call their procedure "inquisitorial," but "mixed"—partly inquisitorial and partly accusatorial. They point to the fact that the state is represented not by the judges, but by the District Attorney or Attorney General, who attends in person or by representative and does not participate in the decision. Moreover, the facts showing guilt are not arranged and organized by the judges who preside at trial, but have been assembled by the Examining Judge or Chamber of Accusations at an earlier stage of the proceedings.

The question of guilt in the Court of Assizes is decided by the jury, who do not participate at all in the prosecution of the case.

There are, however, decided inquisitorial elements in the French procedure. The preliminary hearing, of course, is wholly and frankly inquisitorial, rather than accusatorial as in common law countries. At the trial, the presence of a state's attorney is rather formally than actually significant, since he takes very little part in the proceedings. The presiding judge reads the evidence of guilt, questions the witnesses, and demands explanations of the accused. English and American observers are often shocked by the manner in which he seems to charge the defendant with guilt, and defy him to prove his innocence.

c. Function of the Jury in French Criminal Trials.—Only in the most grave offenses—felonies—does the jury play any part at all. Contraventions are tried by a single judge, and misdemeanors by three judges, without the aid of a jury.

But in felony trials the jury is the finder of the facts. The trial revolves, as in a common law country, around the jury's psychology. The trial is spectacular, the courtroom often crowded, and the case, if sensational, is luridly relayed by the press to the public. Advocacy attains the same heights of comedy and pathos as in the United States.

Although the jury was copied from the English institution in Revolutionary times, it was taken without what Englishmen would consider one of its safeguards—the rules of evidence. Evidence which would be considered "hearsay" at comon law is not excluded. For example, the minutes of the Examining Judges' investigation, are read to the jury, thus repeating statements made by witnesses at another time and place. No objections to testimony may be made on the ground that it is "irrelevant and immaterial." The Presiding Judge asks whatever questions he wishes. Moreover, the jury are entitled to hear all matters of aggravation (such as the defendant's police record), and of extenuation (such as the defendant's previous good character), since they advise the judges in the matter of sentence.

French juries are notoriously sympathetic to crimes of passion—especially murders and deadly assaults provoked by seduction or infidelity. A defendant who drew from a District Court a heavy sentence for the disdemeanor of assaulting an indiscreet wife (while he might have been acquitted had he been tried by a jury for killing her) is said to have remarked, "That's what you get for being too gentle." Indulgence is also frequent in case of political assassinations, if the jury is persuaded that the criminal was impelled by a deep inner conviction.

d. Civil Party in a Criminal Trial.—The French have an interesting device for killing two birds with one stone by means of their "civil party" procedure. A theft or an assault is obviously subject to two different legal attacks—one by the state, on account of the crime committed, and one by the victim, who wants to be paid his damages. The common law obliges the victim to bring his own independent suit for damages. It gives him no opportunity to get his personal justice in the criminal proceeding, and holds that he is guilty of "compounding" a crime if he takes payment in lieu of instituting a prosecution. The French permit him to join his claim to the state's prosecution, and dispose of the two matters at once. If the state does not institute a criminal prosecution, he may himself institute it, on the state's behalf. In either case, he makes himself a "civil party" in the case.

This device has been much admired by English and American commentators for its ingenuity and efficiency. In fact, it is not so foreign to the common law as might be supposed, since it has been shown that civil and criminal proceedings for assault were commonly combined in England prior to 1697, and that this combination explains some of the anomalies of the modern law of assault and battery. The procedure has been under considerable attack in recent years from French writers. Unfortunately, the "civil party" becomes the dominant force in the state's case. He is then in a position to extort an excessive settlement from the defendant as the price of dropping the entire proceeding. When the plaintiff has thus been satisfied, it is difficult for the state to get a conviction for the crime. In other words, the "civil party" procedure increases the opportunity for the practice of "compounding" crimes.

5. Appeals.—French lawyers distinguish sharply between two kinds of appeals. The appeal on the merits (*appel*) brings all the facts and the law before the higher court for review. This is like the historic equity appeal of English law. The appeal on the law (*pourvoi*) is more like a common law writ or error, since it permits no review of the facts. In practice, it is even narrower than this common law writ, since exceptions cannot be taken in France to the admission or exclusion of testimony on grounds of irrelevancy or prejudicial character.

Appeals on the merits can be taken from the judgments of police courts (above a certain minimum) to district courts, and from the original decisions of district courts to courts of appeal. But appeals from the courts of appeal, and from the court of assizes (which enjoys the same standing) go to the Court of Cassation, which hears only appeals on the law.

Appeal on a point of law is a matter of right in criminal cases. The Court of Cassation does not "screen" these cases, as it does its civil appeals, through the Chamber of Requests.

6. Penalties.—The scale of punishment is on the whole more severe in France than in England or America. Penalties are intended to deter by their rigor anyone who is contemplating a career of crime—a feature signalized by the persistence of public guillotining for capital offenses. "Mercy" methods such as execution by electricity or gas have found no reception in France.

Moreover, the more serious felonies not capitally punished are penalized by transportation to the colonies and "forced labor." This does not mean prison industries but digging or pounding stone, frequently with solitary confinement, and manacling. In many cases there is an enforced period of exile to the colonies, in addition to other penalties. There are also detailed provisions with regard to the loss of civil rights.

7. Rights of the accused.—American and English observers have frequently commented on the abridgments of the rights of criminal suspects under French justice. A detailed comparison is called for.

a. Rights which are Guaranteed.

i. Ex Post Facto Laws.—The French law, like the common law, recognizes the right of every man to suffer no penalty which was not provided by law at the time the crime was committed. This right is guaranteed by the penal code, and is usually associated with the maxim *nulle poena sine lege*—no penalty except by law. By codification, which rendered the criminal laws available to the public, the French were the first to make this guarantee really meaningful. They insist on the right of a citizen to know precisely what acts are forbidden, and how they may be punished if committed.

ii. Speedy Public Trial.—The right to a speedy public trial, which is too often denied in American courts, is actually accorded by the French. Observers familiar with the common law never fail to comment on the dispatch of French criminal justice.

iii. Opportunity for Defense by Counsel.—The right to counsel of the defendant's choice was not only recognized, but observed in practice, by pre-war French justice. Moreover, courts followed the practice of appointing counsel for the defense where the defendant was unable to supply any for himself. Since 1897, the defendant has enjoyed right to counsel in the preliminary examination as well as in the trial itself. The Code of Criminal Procedure provides for certain delays between accusation and trial, and between trial and execution, in order to permit preparation of a defense, or an appeal.

iv. Jury Trial.—Trial by jury is guaranteed in felony cases. Although there is no jury in misdemeanor cases, it is important to notice that the decision of the District Criminal Court is made by three judges, not by a single one. A majority of them is sufficient to convict. In a jury trial, a two-thirds majority (eight to four) decides. In the instance of a jury divided seven to five, the three judges add their votes to those of the jury and a majority of the entire fifteen gives the verdict.

v. Self-incrimination.—A Frenchman accused of crime has the right not to be forced to testify against himself, although the sanctions of this right are somewhat different from those in the United States. He cannot refuse to be questioned, and the judge and jury are free to draw inferences of guilt from his refusal to answer. In this respect, his protection is less complete than in common law countries. In another respect, his protection is greater, since a confession made to the police or to the Examining Judge cannot be used in the trial. Any form of torture or oppression to obtain evidence is of course forbidden.

b. Rights Which Are Not Guaranteed.

i. Habeas corpus.—The writ of *habeas corpus* has become the symbol in common law of the right to freedom from imprisonment except on "reasonable and probable" proof of guilt. This right (which is frequently violated in America) does not exist in France; the Examining Judge need not dismiss the accused merely because proof has not yet been found and may hold him while the proof is being gathered. Legislation looking toward "provisional liberty" of the accused was enacted in 1933, but proved ineffective, and was partially repealed in 1935.

ii. Proof "beyond a Reasonable Doubt."—It is completely untrue that a French defendant is presumed guilty until proved innocent. Not only must the offense be proved when the defendant denies guilt; it must be proved in all cases, and a confession does not dispense with proof. However, there is no such emphasis on the "burden" of proof as in American trials, and no requirement that guilt be proved "beyond a reasonable doubt." Proof is sufficient if it convinces the jury and judges.

8. Procedure in military courts.—Under the liberal military code of 1928, procedure in military courts (*tribunaux militaires*) closely approximated that of the civilian criminal courts (*tribunaux de droit commun*), at least in peacetime. The preliminary examination of an Examining Judge was provided for, as well as an appeal to the Court of Cassation on points of law. In time of war, a military court of cassation was to supplant the civilian court, and delays between accusation and execution of sentence were considerably curtailed, but the essential features of procedure remained.

B. Changes since the Outbreak of War.

1. Changes before the armistice.—In order to appreciate the significance of Vichy's changes in procedure, it is important to recognize the extensive relaxations of civil rights which had already taken place. Pre-war laws provided for the acceleration of procedure in military tribunals, and for the extension of their jurisdiction to nonmilitary offenses of military personnel. Other laws gave the prefects a power of investigation and arrest independently of the work of the regular criminal courts, and without the same procedural safeguards to the accused. Thus the summary pursuit and investigation of offenses were amply provided for.

2. Changes effected by Vichy.—Vichy first attacked the assurances of a fair trial in the regular courts. Defendants accused of communistic or anarchistic acts were deprived of their right to counsel of their choice. The opportunity to obtain sympathetic counsel was further undermined by the purging of Jews, foreigners, and Free French sympathizers from the bar, as well as from the bench. The independence of the jury was sapped by requiring it to deliberate in conference with the judges, rather than secretly. Changes in the criminal code invoked the death penalty for crimes not formerly capital, such as thefts and burglaries committed under "black-out" conditions. Acts endangering the safety of the state were to be tried in the absence of the accused.

However, Vichy's attacks on procedure in the existing system of courts has become largely irrelevant through the institution of special courts, in which there is no preliminary examination, no adequate time for preparation of defense, no appeal, and no jury. Finally, defendants were deprived even of the assurance of fairness inherent in the employment of professional judges. Courts martial, which employ military judges, and are bound by no procedural rules at all, have been given jurisdiction of civilian offenses. These courts do not even observe the procedure provided for lawfully established military courts, and violate the most thoroughly established principles of French justice.

There is also a large amount of detention and punishment achieved without even the mockery of a court martial. In addition to their powers to investigate crime, prefects were given the power of "administrative internment"—imprisonment without relation to crime. In the occupied zone, which now includes all of France, German authorities seize suspects either before or after action is commenced by French officials.

C. Problems of the Liberation

The first problem after the liberation of France will be to restore order out of conditions of rebellion and revolution which will have existed for months or years. For this purpose, a vigorous prosecution of the criminal laws will be necessary. Persons and property must be protected, if commerce and industry are to be resumed.

For this purpose, the French system of criminal justice is excellently fitted. If it is a little callous to certain civil liberties, it is still one of the most efficient systems known. Nor has evidence shown that it misbrands more innocent citizens than any other system. Even in zones close to military operations, there are reasons for believing that a French civil court could proceed as expeditiously as a foreign military court. This is true since all prosecution depends on the willing cooperation of the witnesses.

There does not, however, appear to be any reason for the preservation of the laws which violate elementary principles of justice recognized alike by the French and by English-speaking peoples. The right to deprive the accused of counsel of his own choice will serve no purpose in a regime designed to reestablish security, nor will a jury which is required to deliberate under supervision.

A few small portions of the Vichy legislation may however be found useful or necessary for a limited period of unsettlement. In this category fall the provisions for a larger jury panel, and for carrying over old names until a new list can be compiled. The latter will call for some examination into the character of the jurors who have been permitted to remain on the lists.

VI. FRENCH JUSTICE IN CIVIL AFFAIRS

A. Divisions of Jurisdiction

The diverse matters which an American lumps under the head of "civil litigation," as opposed to "criminal," are considered by Frenchmen to fall into entirely separate categories. All claims against the government, for example, are excluded from the ordinary courts; they must be decided by administrative tribunals which are organized on a completely different basis and apply a different law. Since the government operates the postal system, the telephone and telegraph, and the railways, a very considerable part of the law which would come to the ordinary civil courts in the United States is strictly consigned to a special jurisdiction in France.

Even in the administration of justice between private individuals, the French has drawn important lines of demarcation where Americans have none. Business transactions generally fall within the scope of the French Commercial Code, and lawsuits arising out of them are tried in Commercial Courts. Individual disputes over employment contracts are also taken from the ordinary civil courts, to be tried by Prudent Men's Councils. Collective-bargaining controversies are not submitted to courts of law, but to Boards of Conciliation and Arbitration. Justices of the Peace have exclusive jurisdiction not only of small claims, but of many special subjects of litigation without regard to the amount involved.

Consequently, the first question in any French litigation concerns the jurisdiction in which it falls. The rules are entirely too numerous to be readily summarized, and a doubtful litigant would be likely to consult an advocate to determine to what court he must go. The question has important collateral implications, since rules of procedure and of evidence differ among the various courts.

B. Procedure in the Various Courts Which Handle Civil Affairs.

French treatments of procedure usually describe the procedure of each court separately, and a detailed analysis could hardly be made in any other way. But theer are important common features among the various procedures, and a vast amount of cross-reference is inevitably required. In this short survey it will be convenient to look at the various steps of procedure for all the courts at once, noticing the important variations.

1. Conciliation.—The French are profoundly persuaded that the best course in any litigation is to avoid it entirely. Accordingly, they have required litigants in the District Civil Court to show in nearly every case that an attempt at conciliation has been made, through the offices of the Justice of the Peace. Even in suits against the government, where conciliation in its ordinary form is not required, the claimant must give the government prior notice (*memoire au prefet*) by a letter setting forth the nature of the claim.

Exceptions to the rule requiring conciliation are granted where the plaintiff can show the necessity of speed in the disposition of the case. This reason is said to exist in all commercial cases, so that no conciliation proceeding is required for them. Before the other special tribunals, special conciliation procedures exist. The Prudent Men's Councils have two divisions, one for conciliation (*bureau de con-*

ciliation), the other for deciding merits of the case. The Justice of the Peace is required to attempt first to conciliate the cases which he himself will decide if conciliation fails.

2. Summons.—The initial process by which a French plaintiff (*demandeur*) summons a defendant (*défendeur*) bears striking resemblances to the common law summons. It is known by a variety of names, depending on the court in which the suit is brought—*assignation*, *adjournment*, or *citation*—but in nearly every case is issued and served upon the defendant by the court bailiff (*huissier*). It shows the name of the plaintiff's solicitor (if any), the place where the plaintiff may be served with process and/or with notices (*election de domocile*), the grounds of suit (*libelle*) and the time allowed the defendant to appear and put in his defense. In the Labor Council, the summons may be replaced by a mere registered letter (*lettre récommandeé*) giving essentially the same information as a summons.

3. Contentions of the parties.—The written "pleadings" by which the issues are developed in common law courts—the plaintiff's declaration, defendant's answer, and possible further exchanges—are strikingly absent from modern French procedure. At an earlier time, the summons contained a detailed exposition of the plaintiff claim, like a common law "declaration," but that has been reduced to a mere identification of the subject of suit. The defendant's answer (*défense*) and plaintiff's reply (*réponse*) may theoretically be filed in the Civil Court, but have been deprived of all significance by a series of laws culminating in 1935.

The contentions of the parties are now stated in the "conclusions" rather than in a series of pleadings. In the District Civil Court, these must be written, and are exchanged simultaneously a few days before hearing, but they may be freely amended at any time before the close of argument. In the Commercial Courts, Justice of the Peace Courts, and Labor Councils, the conclusions are wholly oral, unless the parties of their own volition put them in written form. At the hearing, the parties further advance their claims by oral arguments (*débats*) on what the evidence proves and how the law applies.

Only in the Council of States does a "written" procedure exist at the present time. There is a complaint (*requête en demande*), answer (*défense*) and reply (*réponse*); even the arguments of counsel (*débats*) must be in writing. Oral argument is sometimes permitted, but it cannot introduce new contentions which are excluded from the briefs.

4. Evidence.—The most striking peculiarity in French procedure, as contrasted with that of the common law, concerns the way in which the parties prove their case. There is no "trial" in which the plaintiff presents his witnesses, and the defendant follows with his; there is no examination of witnesses by counsel, no cross-examination, and none of the objections to testimony which are so conspicuous in common law procedure.

In procedures where speed and simplicity are primary objectives, the witnesses do appear before the court which is to decide the case. But they are examined by the Presiding Judge, rather than by counsel. This occurs in the Justice of the Peace Courts, the Labor Councils, the Commerce Courts, and in "summary procedures" (*procédures sommaires*) of the Civil Court.

In the ordinary procedure of the Civil Court, the taking of testimony is much more formal. It must be taken by a judge specially commissioned for the purpose (*juge commissaire*) by an order of the court which specifies the questions on which the testimony is to be taken. Differences are recognized according to whether the proceeding is designed to test the authenticity of a private document (*verification d'écriture*) or of an official document (*inscription en faux*), to require an adverse party to testify (*interrogatoire*), or to take testimony of disinterested witnesses (*enquête*). Only in the case where the parties themselves tell conflicting stories of the same event as they appear to testify before the court which is to decide the case, in confrontation (*comparution personnelle*). In any event, the testimony of witnesses is not stenographically recorded word for word; condensed minutes (*procès-verbaux*) are made by the court clerk, giving the substance of the proof.

In cases where proof by written documents is possible, oral evidence is the exception rather than the rule. Copies of documents are attached to the parties' "conclusions," and testimony is taken only if the authenticity of the documents is challenged. In all cases, oral testimony of the persons most likely to know the facts is excluded by rules governing the competency of witnesses. The parties cannot testify on their own behalf, nor may their spouses, ancestors, or descendants. Also excluded are persons convicted of felonies or misdemeanors. A larged body of persons may be challenged (*réproche*), but permitted to testify, leaving the weight of their testimony to the court. Among those subject to challenge are close relatives by blood or marriage, servants, persons under indictment, those who have dined or drunk with a party prior to the inquest and since it was ordered, and finally those who have made written statements in favor of one party. The last rule causes particular difficulty in accident cases if statements have been taken from witnesses of the accident. The application of the law in these cases is somewhat unsettled.

In the Council of State, testimony is taken prior to the hearing in court by officers who may be compared to American Masters in Chancery, or Referees (*maitres des requêtes, auditeurs*).

5. Judgment.—There are no juries in the French courts which decide civil controversies. Judges decide the facts and the law. The resulting contrast with American procedure should not, however, be exaggerated. It will be recalled, in the first place, that juries are frequently waived in civil matters in the United States, and that in courts of equity, which hear a substantial proportion of civil litigation, there are normally no juries at all. At the same time it is to be recognized that French courts have some of the characteristics of juries. In all courts except that of the Justice of the Peace there is more than one judge—at least three. Moreover, the judges in the Prudent Men's Councils and in the Commerce Tribunals are laymen who bring to the case their experience in the kind of affairs which are involved.

The decision (*arrêts*) of French courts assume a written and a rather rigid form in all courts. Unlike an American Jury verdict, which usually tells only who is the winner and how much he is awarded, they must recite the facts and legal considerations on which they are based. In this respect they may be compared with the findings of fact and conclusions of law of American equity practice. The findings and conclusions are contained in a long series of clauses beginning with the French equivalents of "whereas" (*attendu que* or *considérant que*), and lead up to the succinctly stated judgment that the plaintiff shall recover a stated amount from the defendant, or whatever the decision may be.

It is impracticable to set out appeal procedure in this brief review of French procedure. Some observations on jurisdiction of appeals are contained above in the discussion of courts.

C. Vichy and the Problems of Liberation

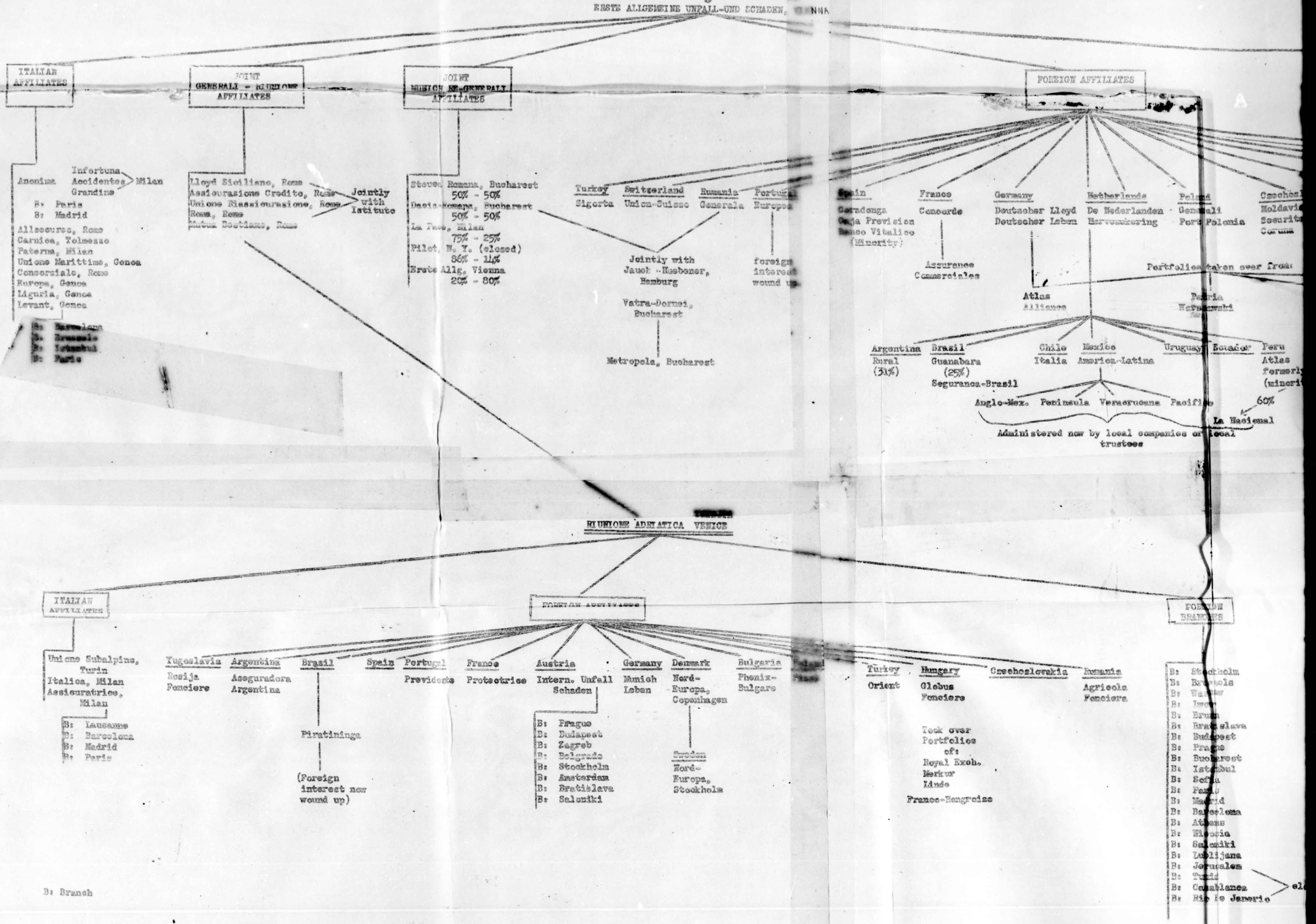
Vichy has neither tampered in any important degree with the system of civil justice, nor set up a substitute system. It is true that civil justice has languished, largely because men who fear to lose their lives or liberties lose interest in infringements of contract, or encroachments upon property.

To restore civil justice to a healthy state, nothing appears necessary beyond a return to peace and security, and the restoration of a representative bench and bar in whom the citizens have confidence. Emergency measures, or temporary courts, would seem to defeat their purpose if they aimed to aid civil justice. The objective of Frenchmen will be to return to their traditional institutions.

U. S. GOVERNMENT PRINTING OFFICE: 1944

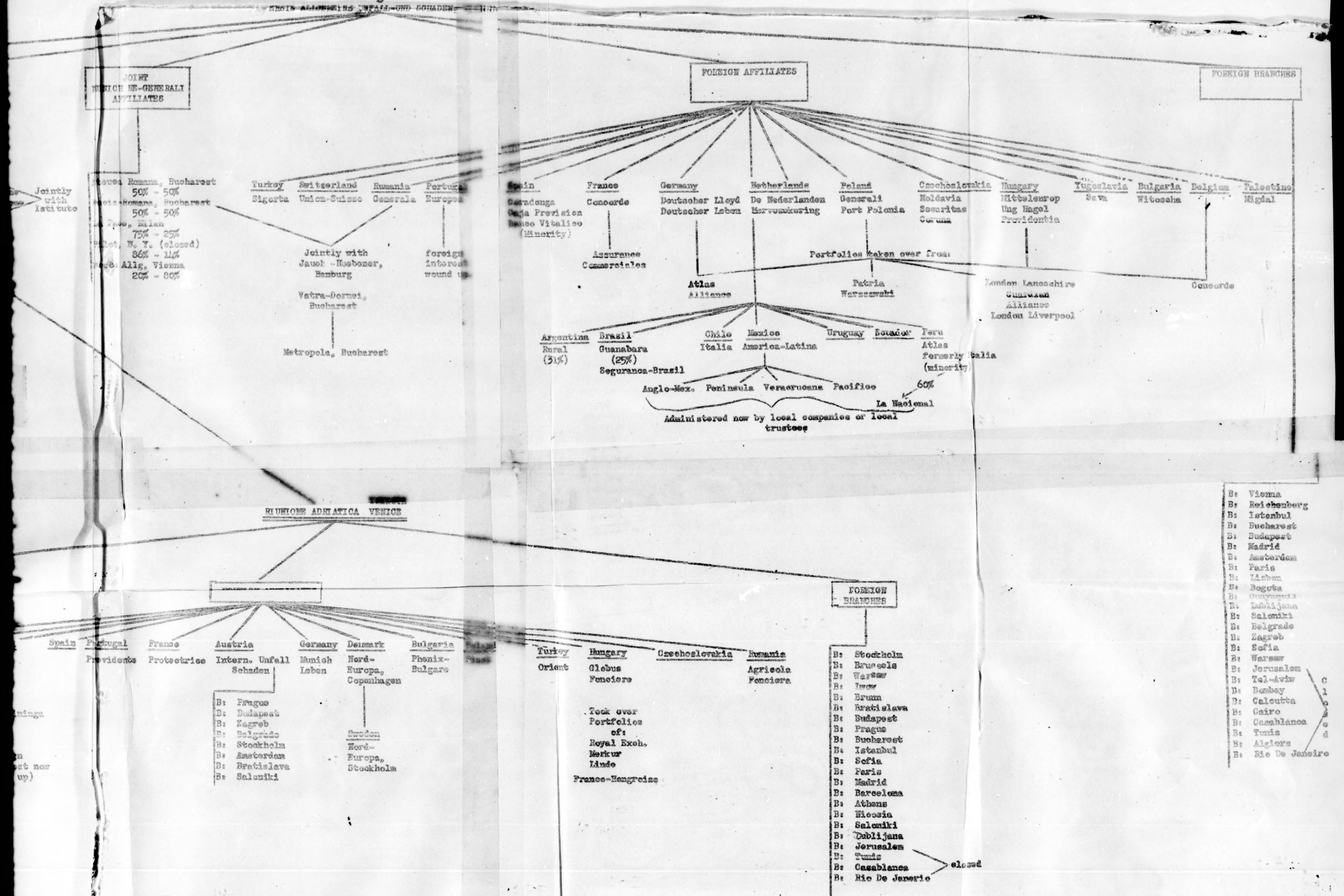
Due to its large size, the following document has been filmed in segments. The order of the segments is as follows: left to right, top to bottom.

Chart 2. ASSICURAZIONI GENERALI. TRIES VENIC


ERSTE ALLGEMEINE UNFALL-UND SCHADEN, [illegible]NNA
ITALIAN AFFILIATES
Anonima
Infortuna
Accidentes
Grandine
Milan
B: Paris
B: Madrid
Allsecures, Rome
Carnica, Tolmezzo
Paterna, Milan
Unione Marittime, Genoa
Consorziale, Rome
Europa, Genoa
Liguria, Genoa
Levant, Genoa
B: Barcelona
B: Brussels
B: Istanbul
B: Paris
JOINT GENERALI - RIUNIONE AFFILIATES
Lloyd Siciliano, Rome
Assicurazione Credito, Rome
Unione Riassicurazione, Rome
Roma, Rome
Mutua Bestiame, Rome
Jointly with Istitute
JOINT MUNICH RE-GENERALI AFFILIATES
Steuea Romana, Bucharest
50% - 50%
Dacia-Romana, Bucharest
50% - 50%
La Pace, Milan
75% - 25%
Pilot, N. Y. (closed)
86% - 14%
Erste Allg, Vienna
20% - 80%
FOREIGN AFFILIATES
Turkey
Sigorta
Switzerland
Union-Suisse
Rumania
Generala
Portug
Europea
Jointly with Jauch -Huebener, Hamburg
Vatra-Dornei, Bucharest
Metropola, Bucharest
foreign interest wound up
Spain
Caradonga
Caja Prevision
Banco Vitalico
(Minority)
France
Concorde
Assurance Commerciales
Germany
Deutscher Lloyd
Deutscher Leben
Atlas
Alliance
Netherlands
De Nederlanden
Herverzekering
Poland
Generali
Port Polonia
Patria
Warszawski
Czechosl
Moldavia
Securitas
Coruna
Portfolios taken over from:
Argentina
Rural
(51%)
Brazil
Guanabara
(25%)
Seguranca-Brasil
Chile
Italia
Mexico
America-Latina
Anglo-Mex.
Peninsula
Veracrucana
Pacifico
Administered now by local companies or local trustees
Uruguay
Ecuador
Peru
Atlas
formerly
(minori
60%
La Nacional
RIUNIONE ADRIATICA VENICE
ITALIAN AFFILIATES
Unione Subalpina, Turin
Italica, Milan
Assicuratrice, Milan
B: Lausanne
B: Barcelona
B: Madrid
B: Paris
FOREIGN AFFILIATES
Yugoslavia
Rosija
Fonciere
Argentina
Aseguradora Argentina
Brazil
Piratininga
(Foreign interest now wound up)
Spain
Portugal
Providente
France
Protectrice
Austria
Intern. Unfall Schaden
B: Prague
B: Budapest
B: Zagreb
B: Belgrade
B: Stockholm
B: Amsterdam
B: Bratislava
B: Saloniki
Germany
Munich Leben
Denmark
Nord-Europa, Copenhagen
Sweden
Nord-Europa, Stockholm
Bulgaria
Phenix-Bulgare
Turkey
Orient
Hungary
Globus
Fonciere
Took over Portfolios of:
Royal Exch.
Merkur
Linde
Franco-Hongroise
Czechoslovakia
Rumania
Agricola
Fonciere
FOREIGN BRANCHES
B: Stockholm
B: Brussels
B: Warsaw
B: Lwow
B: Brunn
B: Bratislava
B: Budapest
B: Prague
B: Bucharest
B: Istanbul
B: Sofia
B: Paris
B: Madrid
B: Barcelona
B: Athens
B: Nicosia
B: Saloniki
B: Lublijana
B: Jerusalem
B: Tunis
B: Casablanca
B: Rio de Janerio
el

B: Branch

Chart 2. ASSICURAZIONI GENERALI. TRIESTE VENICE


KESIN ALLGEMEINE UNFALL-UND SCHADEN
JOINT MUNICH RE-GENERALI AFFILIATES
Jointly with Istituto
Steaua Romana, Bucharest
50% - 50%
Socia-Romana, Bucharest
50% - 50%
La Pace, Milan
75% - 25%
Pilot, N. Y. (closed)
86% - 14%
Kesta Allg, Vienna
20% - 80%
FOREIGN AFFILIATES
Turkey
Sigorta
Switzerland
Union-Suisse
Rumania
Generala
Jointly with Jauch - Huebener, Hamburg
Vatra-Dornei, Bucharest
Metropola, Bucharest
Portug
Europa
foreign interest wound up
Spain
Covadonga
Caja Prevision
Banco Vitalico
(Minority)
France
Concorde
Assurance Commerciales
Germany
Deutscher Lloyd
Deutscher Leben
Netherlands
De Nederlanden
Herverzekering
Poland
Generali
Port Polonia
Czechoslovakia
Moldavia
Securitas
Coruna
Hungary
Mitteleurop
Ung Hagel
Providentia
Yugoslavia
Sava
Bulgaria
Witoscha
Belgium
Palestine
Migdal
Portfolios taken over from:
Atlas
Alliance
Patria
Warszawski
London Lancashire
Guardian
Alliance
London Liverpool
Concorde
Argentina
Rural
(31%)
Brazil
Guanabara
(25%)
Seguranca-Brasil
Chile
Italia
Mexico
America-Latina
Uruguay
Ecuador
Peru
Atlas
formerly Italia
(minority)
Anglo-Mex.
Peninsula
Veracruzana
Pacifico
60%
La Nacional
Administered now by local companies or local trustees
FOREIGN BRANCHES
B: Vienna
B: Reichenberg
B: Istanbul
B: Bucharest
B: Budapest
B: Madrid
B: Amsterdam
B: Paris
B: Lisbon
B: Bogota
B: Guayaquil
B: Lubljana
B: Saloniki
B: Belgrade
B: Zagreb
B: Sofia
B: Warsaw
B: Jerusalem
B: Tel-Aviv
B: Bombay
B: Calcutta
B: Cairo
B: Casablanca
B: Tunis
B: Algiers
B: Rio De Janeiro
Closed
RIUNIONE ADRIATICA VENICE
Spain
Portugal
Providente
France
Protectrice
Austria
Intern. Unfall Schaden
B: Prague
B: Budapest
B: Zagreb
B: Belgrade
B: Stockholm
B: Amsterdam
B: Bratislava
B: Saloniki
Germany
Munich Leben
Denmark
Nord-Europa, Copenhagen
Sweden
Nord-Europa, Stockholm
Bulgaria
Phenix-Bulgare
Turkey
Orient
Hungary
Globus
Fonciere
Took over Portfolios of:
Royal Exch.
Merkur
Linde
Franco-Hongroise
Czechoslovakia
Rumania
Agricola
Fonciera
FOREIGN BRANCHES
B: Stockholm
B: Brussels
B: Warsaw
B: Lwow
B: Brunn
B: Bratislava
B: Budapest
B: Prague
B: Bucharest
B: Istanbul
B: Sofia
B: Paris
B: Madrid
B: Barcelona
B: Athens
B: Nicosia
B: Saloniki
B: Lublijana
B: Jerusalem
B: Tunis
B: Casablanca
B: Rio De Janerio
closed
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up)

TABLE 6 (continued)

E. PROFIT AND LOSS ACCOUNT (Property Insurance)

Credits	1940	1939
	Lire	
Premium Reserves, Fire	111,851,065	101,334,123
" Transport	29,459,336	19,595,033
" Burglary	7,107,818	7,101,677
" Accident and Misc.	20,637,972	9,915,318
Loss reserves, Fire	29,891,510	26,237,310
" Transport	67,986,183	44,337,643
" Burglary	6,963,234	7,205,179
" Accident and Misc.	20,911,754	14,208,444
	294,808,872	229,934,727
Exchange Adjustments	2,603,531	359,519
Total..................................	292,205,341	230,294,246
Premium Income, Fire	232,742,142	257,187,149
" Transport	355,626,959	274,453,677
" Burglary	15,801,041	16,657,005
" Accident and Misc.	59,010,088	64,334,802
Investments	20,673,997	19,323,852
Policy Fees	36,169,459	33,314,874
Other Income	122,834	—
Profits through Trading in Securities	4,860,283	5,852,618
Total..................................	1,017,212,144	901,418,223
Debits		
Reinsurance Premiums paid:		
Fire	119,050,624	123,885,070
Transport	211,577,883	167,400,366
Burglary	7,929,422	8,371,773
Accident and Misc.	20,361,836	17,636,319
Losses paid: Fire	50,909,898	54,935,894
" Transport	57,931,229	45,489,801
" Burglary	3,308,003	3,476,571
" Accident and Misc.	23,388,589	14,790,992
Commissions paid and overhead	100,004,893	99,896

Members of the Board:

Antonio N. Cosulich, Industrialist and shipbuilder - President
Giorgio Pitacco, State Minister and Senator - Vice-President
Filippo Artelli, National Counsellor, Trieste
Giovanni Balella, Rome
Giovanni Banelli, Senator, Trieste
Giacomo Battistelli, Rome
Arturo Bocciardo, Senator, Genoa
Taino Bonacossi - Padua
Giuseppe de Arzago, State Minister and Senator - Milan
Vittorio Cerruti, Ambassador - Rome
Bruno Coceani, National Counsellor - Trieste
Filippo Cremonesi, State Minister and Senator - Rome
Baron Demetrio Economo - Trieste
Count Giuseppe della Gherardesca, Senator - Florence
Alfredro Frassati, Senator - Turin
Giuseppe Frighani, National Counsellor - Naples
Carlo Galli, Ambassador - Venice
Count Dino Grandi, Ambassador and National Counsellor - Bologna
Francesco Giunta, National Counsellor - Padua
Edmondo Oberti di Valnera - Trieste
Count Pietro Orsi, Senator, Venice
Marquis Dino Perrone Compagni, State Minister and Senator - Florence
Count Aldo Rossinidi Valgrande - Senator - Novara
Giovanni Scaramangaite Altomonte, Trieste
Ignacia Thaondi Revel, National Counsellor - Rome
County Dr. Mario Tripcovich, Trieste
Giuseppe Pietro Vervi - Rome

Directing Board:

Volpi (removed)
Cosulich
Pitacco
Balella
Economo
Rossini
Scaramangaite
Tripcovich
Cremonesi

Central Managers - Trieste

Gino Baroncini
Michele Sulfina
Dr. Giulio Gleva

Recent reports from Italy indicate that the Generali concern is the first on the list to be "socialized." The development indicates that the new puppet regime is particularly enraged against the concerns which were formerly under the control of Count Volpi, who prematurely deserted the tottering Mussolini regime. German financial papers report a sharp decline of the rates of the Generali shares on the Milan stock exchange and frankly ascribe this decline to the imminent nationalization. However, it should also be noted that the same sources[1] report (under the dateline Rome, 1 February 1944) a sudden rise of the Generali shares from 2,500 to 3,450, a rise for which no explanation has yet been given.

The company maintains a head office at Via Nicolo Machiavelli 4, Trieste, and a general office at Procuratie di S. Marco, Venice. The difference is that the head office conducts the foreign and international business, while the domestic (Italian) business is centralized in the general office. The company writes all insurance branches. Its capital is 120,000,000 lire, fully paid. Its total premium income in 1942[2] amounted to 1,336,000,000 lire, as compared with 1,167,000,000 lire in 1941 (life insurance excluded). The life amounts insured totaled 12,426,000,000 lire in 1942, as compared with 10,461,000,000 lire in 1941. It owns realty in an amount of 750,000,000 lire, most of which is situated in Italy.[1] The balance sheet for 1942 shows a net profit of 36,500,000 lire, as compared with 33,800,000 lire in 1941. Dividends in the amount of 35 lire per share were distributed in 1942.

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[1] Munichener Neueste Nachrichten, 2 February 1944.
[2] All 1942 figures are taken from the Deutsche Bergwerks-Zeitung of 8 July 1943. The figures stated above do not include the premium income of the affiliate companies.

In order to appreciate fully the process of concentration of the whole Italian insurance market toward the *Generali* - seconded by the *Istituto* and the *Riunione* - it is necessary to contrast the above premium income figures with earlier figures, such as the total premium income in 1936, which then was 382,000,000 lire (life insurance excluded), and in 1938, when it was 487,000,000 lire (life insurance excluded). At that time the international business of the *Generali* was at its peak, and most of the foreign non-European income was cut off in 1942 when the *Generali* became an enemy. Notwithstanding this adverse factor, *Generali* was able to triple its income in 1942 as compared with 1938.

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[1] The realty and agricultural properties of the *Generali* include, according to the latest available balance sheet, the following:

In Italy: 115 buildings in Trieste, Venice, Rome, Acqui, Arezzo, Avellino, Bari, Bologna, Bolzano, Brescia, Cecina, Cremona, Fabriano, Ferrara, Fiume, Florence, Genoa, Gorizia, Larino, Littoria, Lonigo, Lugo, Mantua, Milan, Naples, Novara, Padua, Palermo, Pisa, Ravenna, Rovigo, Salerno, Tresigallo, Treviso, Turin, Udine, Vercelli, Verona, Vittorio Veneto, Addis Ababa, Asmara, Bengasi, Tripoli; 5 farms in Caorle-Ca' Corniani, Medicina-Conselice-Portonovo, Pisa-Vicarello, Poggio Renatico-Raveda, Reggio Emilia-Santa Elena.

Most of the property owned is situated in Trieste (18 buildings), followed by Milan (5), Venice, Rome, and Padua (4 in each case).

Abroad : 97 buildings in Paris, Brussels, Antwerp, Berlin, Bregenz, Graz, Leipzig, Linz, Reichenberg, Salzburg, Teplitz-Schonau, Vienna, Prague, Bruenn, Mahr, Ostrau, Bratislava, Budapest, Kassa, Athens, Belgrade, Zagreb, Ljubljana, Warsaw, Katowice, Poznan, Tczew, Sofia, Istanbul, Cairo, Jerusalem, Beiroot, Rio de Janeiro, Tirana, Tunis; 1 farm in Richebourg (France).

Full balance sheets of the Generali have not been available for the last two years. The investments, profits, and losses of the preceding years are shown in the Table 6 following. In view of the prominent position held by the Generali combine, they are characteristic for the whole Italian insurance industry.

In addition to the Generali of Trieste and Venice, there is a powerful chain of affiliates in which the Generali has a financial interest and which for all practical purposes must be identified with the Generali concern. There are two reasons why those affiliate companies have not been merged with the Generali: there were cases where the Generali acquired the controlling interest of a local company which had its own history and provincial standing; it was then deemed opportune not to sever those roots and to keep the local good will by preserving the firm. In other instances no such reasons can be preferred which would justify a duplication of management and administration, the determining factor lying rather in the desire to create or maintain apparently important posts and to secure sources of income for directors and executives for which there would otherwise be no place.

TABLE 6. BALANCE-SHEET DATA OF THE ASSICURAZIONI GENERALI, 1936-40

A. GENERAL DATA

FIRE (Glass Included)	1936	1937	1938	1939	1940
Subscribed premiums	213,141,468	233,965,546	240,097,538	257,187,149	282,742,142
Net premiums	118,167,470	121,594,507	129,599,851	133,302,079	113,691,518
Net losses	45,841,475	52,686,727	58,530,908	54,935,894	50,909,898
Commissions	---	---	---	---	---
Net premium reserves	91,349,363	95,074,231	101,334,123	111,851,066	97,809,402
Net loss reserves	25,433,804	22,378,994	26,237,310	29,891,510	41,687,485
BURGLARY					
Subscribed premiums	14,722,871	16,360,164	15,007,804	16,657,005	15,801,040
Net premiums	7,787,074	8,182,184	8,278,041	8,285,233	7,871,619
Net losses	3,765,423	3,960,173	4,118,734	3,476,571	3,308,003
Commissions	---	---	---	---	---
Net premium reserves	6,393,499	6,687,347	7,101,677	7,107,818	6,769,592
Net loss reserves	7,132,586	6,995,175	7,205,178	6,963,234	9,381,037
TRANSPORT					
Subscribed premiums	118,906,397	182,402,587	192,032,717	274,453,677	355,626,959
Net premiums	58,265,022	83,034,829	74,982,402	107,053,311	144,049,075
Net losses	35,264,847	49,220,069	48,392,274	45,489,802	57,931,229
Commissions	---	---	---	---	---
Net premium reserves	14,595,770	20,064,075	19,595,033	29,459,336	40,780,557
Net loss reserve	27,343,167	39,560,503	44,337,643	67,936,183	117,873,049
REINSURANCE					
Subscribed premiums	35,591,848	40,488,207	39,888,993	64,334,803	59,010,088
Net premiums	26,855,291	29,917,414	27,720,829	46,698,484	38,648,252
Net losses	15,869,026	17,504,937	15,907,356	14,790,992	23,368,589
Commissions	---	---	---	---	---
Premium reserves	9,263,832	9,841,040	9,915,318	20,637,972	17,391,713
Loss reserves	11,619,798	11,572,592	14,208,444	20,911,754	28,916,011
LIFE					
Subscribed premiums	426,380,410	352,533,255	388,891,666	372,610,620	368,899,057
Net premiums	363,338,201	288,414,602	319,755,014	306,366,602	300,398,085
Net losses	112,990,291	130,104,912	157,633,304	189,705,509	171,267,218
Commissions	---	---	---	---	---
Net capital reserves	1983,427,544	2065,509,543	2128,497,207	2506,268,241	2413,506,285
Net loss reserves	24,160,679	25,069,829	30,741,015	41,193,949	42,576,298

TABLE 6 (continued)

B. BALANCE SHEET AS OF DECEMBER 31 (Life Insurance)

Assets	1940 Lire	1939 Lire
Cash on hand	4,448,247	7,222,195
Cash on deposit	164,190,521	192,278,572
House and agricultural property	716,812,000	707,196,000
Securities	1,265,156,905	1,065,412,170
5% Italian real property loan	---	56,141,400
Mortgage loans	23,539,339	22,429,851
Loans on companies' life policies	209,672,170	237,337,590
Outstanding balances due from reinsurers	379,373,627	359,194,845
Outstanding balances due from branch offices	63,939,446	62,297,862
Current account with property insurance department	6,643,472	8,344,037
Sundry debtors	3,243,692	3,297,059
Deposit guarantees	35,495,166	33,998,257
Value of inventory of real property	9,980,463	10,150,042
Total	2,902,495,048	2,765,299,880

Liabilities	1940 Lire	1939 Lire
Capital fully paid up	60,000,000	60,000,000
Capitalized premium reserve	9,927,663	9,347,363
Reserves against fluctuation in the value of securities	56,638,068	49,859,388
Reserves against depreciation of house property	99,796,264	99,347,464
Extraordinary reserve	20,000,000	17,500,000
Premium reserve	2,313,345,684	2,208,567,015
Premium transfer	100,160,601	97,701,228
Loss reserves	42,576,296	41,193,949
Outstanding dividend claims	3,253,637	3,220,592
Outstanding balances due to reinsurers	151,603,229	134,738,678
Outstanding claims due to branch offices	576,989	967,829
Sundry creditors	450,166	1,708,568
Deposits by way of guarantee	35,495,166	33,998,257
Profit	8,671,285	7,149,551
Total	2,902,495,048	2,765,299,880

RESTRICTED

RESTRICTED

TABLE 6 (continued)

C. BALANCE SHEET AS OF DECEMBER 31 (Property Insurance)

Assets	1940 (Lire)	1939 (Lire)
Cash on hand	8,512,541	5,724,584
Cash on deposit and current accounts with banks	155,806,115	58,342,913
Securities	507,779,330	475,140,044
Bills of exchange	119,237	398,784
Outstanding balances due from reinsurers	190,965,479	160,870,440
Outstanding balances due from branch offices	54,461,496	122,676,103
Sundry debtors	32,169,356	55,534,722
Deposits (guarantees)	82,814,960	97,541,818
Total	1,010,627,512	975,729,408

Liabilities	1940 (Lire)	1939 (Lire)
Capital fully paid up	60,000,000	60,000,000
Capitalized profit reserves	38,586,966	34,345,612
Reserves against fluctuation in the value of securities	101,403,278	101,839,824
Special reserves	20,000,000	17,500,000
Premium reserves	162,751,264	169,056,192
Loss reserves	197,857,582	125,752,681
Staff pension fund	35,883,921	82,340,137
Outstanding balances due to reinsurers	194,363,545	206,642,608
Outstanding balances due to branch offices	2,405,895	10,426,791
Current account of life insurance department	8,643,472	9,344,037
Sundry creditors	28,548,324	31,524,429
Deposits	82,814,960	97,641,818
Profits, indlucing profit from current year	31,368,305	31,415,479
Total	1,010,627,512	975,729,408

TABLE 8 (continued)

D. PROFIT AND LOSS ACCOUNT (Life Insurance)

Credit	1940 Lire	1939 Lire
Insurance fund and reserves of preceeding year:		
Premium reserve	2,208,567,013	2,033,396,412
Premiums brought forward	97,701,228	93,100,795
Loss reserve	41,193,949	30,741,015
	2,347,462,190	2,157,238,222
Adjustment for exchange rates	-37,422,287	+33,751,876
	2,310,039,903	2,190,970,098
Adjustment of portfolios	1,769,517	30,420,367
Total	2,311,809,420	2,221,390,465
Premiums received	366,899,057	372,610,620
Interest on investments	101,209,260	99,184,519
Registry fees - stamp duties	9,136,752	9,155,738
Profits realized on investments	7,309,467	---
Profits on foreign exchange	225,282	---
Total	2,796,689,208	2,702,341,342

	1940	1939
Reinsurance premiums paid	66,500,971	66,244,019
Claims due - net of reinsurance	113,078,785	109,752,480
Real purchase of life insurance policies - net	56,188,433	79,953,029
General expenses and commission - net	33,914,221	31,967,765
Administration expenses- net	42,721,146	44,249,959
Collection commissions-net		
Medical fees		
Duties and taxes	13,177,101	12,625,354
Amortization	1,754,686	316,249
Foreign exchange losses	---	120,766
Extraordinary reserve	2,500,000	2,500,000
Premium reserve - net:		
Death	2,169,462,198	2,061,820,869
Life	65,906,917	51,879,739
Annuities	91,814,987	89,005,307
Incapacity	6,162,581	6,061,098
Premium brought forward - net:		
Death	97,546,687	95,265,193
Life	2,006,568	2,074,614
Annuities	608,346	341,422
Loss reserve - net:		
Death	41,189,093	40,085,291
Life	648,313	682,867
Annuities	738,890	425,790
Profit	8,671,265	7,149,551
Total	2,796,589,208	2,702,341,342

Allocation of Profits	1940 Lire	1939 Lire
Dividends	21,000,000	21,000,000
Dividends to share holders	1,825,455	1,826,265
Reserve against depreciation of real property	989,312	981,980
Profit reserve	2,840,994	2,821,755
Reserve against fluctuation in the value of securities	8,978,624	6,985,961
Balance carried forward to insurance account	4,405,205	4,969,069
Total	40,039,590	38,585,030

Table 6 (continued)

F. DISTRIBUTION OF DIVIDENDS

Year	fl.Gold	Percent
1841	25.20	8 —
1845	31.97	10.14
1850	61.52	19.33
1855	55.35	17.57
1860	29.50	9.36
1865	29.40	9.33
1870	60 —	19.04
1875	61.50	19.46
	Francs	
1880	180	27.30
1885	310	47.24
1890	300	45.71
1895	340	51.81
1900	360	54.86
1905	420	63.48
1910	700	83.33
	Kronen	
1915	680	34
	Lire	
1920	640	30.83
1925	150	30
1930	175	35
1931	175	35
1932	175	35
1933	175	35
1934	175	17.5[a]
1935	175	17.5
1936	175	17.5
1937	175	17.5
1938	175	17.5
1939	35[b]	17.5
1940	35	17.5

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[a] Due to the change of the nominal value of the shares from 500 to 1000 lire.

[b] Per share of 200 lire as compared with 1000 lire in the preceding years.

Financial interests of Generali in domestic corporations, according to the latest impression available, is presented in Table 7 following:

Table 7. INTERESTS OF GENERALI IN DOMESTIC COMPANIES

Italian Companies	Year Established	Capital in Lire	Total Shares	Shares Held by Generali	Percent of shares owned by Generali
(1) L'Anonima Infortuni, Milan	1896	32,000,000	80000	28944	ab. 36% Casualty
(2) L'Anonima Grandine, Milan	1890	6,000,000	24000	9201	" 38% Hail
(3) Alleanza-Securitas-Esperia ("Allsecures"), Rome	1933	8,500,000	85000	8330	" 98% Fire
(4) Alleanza Vita, Milan	1898	15,000,000	15000	14722	" 97% Fire
(5) La Carnica, Tolmezzo	1920	2,000,000	20000	19976	" 99% Fire, Cas.
(6) Levante, Genoa	1920	10,000,000	10000	3334	" 33-1/3% Marine
(7) La Paterna, Milan	1935	10,000,000	10000	1875	" 18.75% Fire
(8) La Sicilia, Rome	1885	2,000,000	25000	13842	" 55% Marine
(9) Unione Italiana di Sicurta Marittime, Genoa	1917	10,000,000	40000	2000	" 5% Marine
(10) Liguria, Genoa	1883	4,000,000	4000	200	" 5% Marine
(11) Societa Italiana di Assicurazione Credito, Rome	1927	5,000,000	17000	1500	" 10% Credit
(12) Europa, Genoa	1921	10,000,000	10000(belonging to Levant)		Marine

RESTRICTED

RESTRICTED

On these companies the following information is available:

(1.) L'Anonima Infortuni. This company, with head offices at Piazza Cordusio 2, Milan, specialized in casualty insurance. For tax and license reasons, the parent company does not engage in casualty insurance. L'Anonima Infortuni is fully owned by Generali interests, because the remainder of the shares (64 percent) not held by Generali are held by the Allgemeine Unfall und Schaden of Vienna, which in turn is owned by the Generali.

The management which was formerly in the hands of A. Gnochei, (described as a politically and technically reliable executive who does not believe in Fascism) is now in the hands of Francesco Scolari and A. W. Ugo Bono, the latter a prominent member of the Fascist National Federation of Insurance Executives.

(2.) L'Anonima Grandine. This company, with head offices at Piazza Cordusio 2, Milan, was founded by the Generali and is the most important hail insurance[1] company in Italy. Although the Generali of Trieste holds only 38 percent of the shares, the balance is owned by subsidiaries of the Generali, such as the Allgemeine Unfall und Schadens of Vienna, which in turn are owned by the Generali.

The management of the hail company lies in the hands of U. Baccolini, who has been described as a reliable technician without political aspirations.

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[1] The figures stated above for the Generali do not include the premium income of the affiliate companies.

(3.) Alleanza Securitas Esperia ("Allsecures"). The head offices of this company are now in Rome at Via delle Mercede 11. The company started operation as a Sicilian outfit at Palermo under the name of Securitas. The Generali bought the shares of the Sicilian outfit and bought also the shares of the company Esperia, formerly operated at Genoa. Both companies were managed and financed by the Generali under the new name. The company has an excellent business record and its own organization. It is not licensed to transact life business; life insurance is directly written in the name of the Generali.

The managing director, Giuseppe Scagliarini, has been replaced by Lesizi Baroffio, National Councillor, an ardent Fascist and member of the top ranking body in the Fascist syndicalistic insurance system.

(4.) Alleanza Vita. This company, with head offices at Via Cappuccini 2, specializes in industrial insurance and writes only small policies, between five and ten thousand lire, with weekly payments of premiums.

(5.) La Carnica. The head offices of this company are in the Italian Alps at Tolmezzo, in the Province of Udine. It is a small regional insurance company which does business exclusively with the Alpine farmers and craftsmen.

(6.) Levante. The head offices of this company are at 2 Via Balbi. Established after the first world war, this company has become the most important Italian marine underwriter, and a strong competitor to Lloyds in the Mediterranean. The company originated in Turkey where its manager developed a very important tobacco business.

The company writes marine insurance exclusively, both direct and indirect, and is affiliated both by capital and interlocking directorates with the *Europa.*

Its present managing director, Ugo Fassio, has been described as a dangerous opportunist. He is said to have been a personal friend of Ciano.

(7.) *La Paterna.* The head offices of this company are at 19 Corso Italia. It owes its existence to the French company, *La Paternelle* of Paris, from which company it has taken over all the Italian business.

(8.) *Lloyd Siciliano* (now:*La Sicilia*). The head office of this company is in Rome at Via della Mercede 11, and its administrative office is at Palermo. Originally the company belonged to the family of the former Italian Prime Minister, Orlando. Practically all the direct business written by the company originates in Sicily where the Orlando family is very well known and has excellent relations.

The *Generali* later gave the company their financial and technical support, but in recent years the controlling interest seems to have come into the hands of the *Generali* competitor, the *Riunione.* At the present time the *Riunione* is represented on the board of the *Lloyd Siciliano* by its chairman M. Marchesano, while there are no representatives of the *Generali* on the board. The Riunione claims, in its publications and year books, that Lloyd Siciliano is a member of the Riunione concern.

The head office in Palermo is run by the youngest son of former Premier Orlando, who has been described to be definitely not Fascist.

(9.) Unione Italiana di Sicurta Marittima. The head offices of this company are at Via alla Nunziata 18, Genoa. The company specializes in marine and aviation insurance. Generali has only a minor interest in the company.

Its general manager, Franco Silvio Coda, is reported to be politically reliable.

(10.) Liguria. This company, with head offices at Piazza Vigne 4, Genoa, specialized in marine insurance. The Generali has only a minor interest in the company. It fully cooperates with the Generali by exchange of business, consultations, and personnel. Its director is Guilio Fiorato.

(11.) Societa Italiana di Assicurazione Credito. When this company was established in 1927 it specialized in credit business and had very bad results. As a consequence, the company, which is now operating in the offices of and under the continuing control of the Unione Italiana de Riassicurazione, reduced its activities. The three big groups, Generali, Riunione, and Istituto were required to give their financial support to the company in exchange for shares to which they had subscribed. This rehabilitation of the company by way of competitors was forced upon the Italian government because credit was considered necessary for the development of import and export as a factor to obtain foreign exchange.

(12.) Europa. This company specialized in marine insurance and reinsurance; its offices and management are identical with the Levante, of which the Europa is a sister company. The company is directed by a Fascist of the most vicious type, Rag. Ugo Fassio; thanks to his political connection, he was able to double the premium income between 1938 and 1942, a unique event in Italian marine insurance, which has been at a standstill since 1940.

B. The Riunione Group

The Riunione Adriatica di Sicurta is the second largest insurance concern in Italy. It is the strongest competitor of the Generali.

The company was founded in 1838 and has a present capital of 100,000,000 lire, of which 50,000,000 lire are paid up.

The company writes the following classes of insurance: fire, hail, life, marine, bell fracture, plate glass, and reinsurance.

Like the Generali, the Riunione has head offices in Trieste and in Venice; the former office, situated at 35 Via Mazzini, is the chief office for all operations except the domestic business; the latter is conducted through the Venice head office.

The Riunione has more than 2,000 agencies and sub-agencies in Italy and controls affiliate companies in Rumania, Bulgaria, Spain, Bohemia, Hungary, Serbia, Portugal, Denmark, France, Germany, Austria, Turkey, and Poland.

It has agencies acting in the name of the Italian parent concern in the following countries: Albania, Belgium, Bulgaria, Far East, France, Greece, Croatia, Poland, Rumania, Serbia, Slovakia, Spain, Syria, Turkey, and Hungary. The offices in Egypt, Tunisia, Algeria and Morocco are now under sequestration.

The following were the principal directors of the company according to the latest available information:

Chairman, Fulvio de Suvich (dismissed early 1944); Vice-Chairmen, Enrico Parisi and Dr. Alberto Pirelli; managing directors, A. de Frigessi di Rattalma and E. Marchesano.

The actual management lies in the hands of the managing directors, Frigessi and Marchesano.

Frigessi, who is a Doctor of Law, a Grand Officer of the Fascist Order, a Grand Officer of the Order of the Italian Crown, and who has recently been awarded Rumanian and Greek decorations, lives at Trieste, 2 Via San Caterina. He is the principal figure of the *Riunione* concern and a man of outstanding reputation and experience in international insurance. This made him indispensable to the company; when the Jewish racial laws became in force in 1938, like Sulfina of the *Generali*, he was made an "honorary Aryan." However, he had to resign from his post as chairman of the company, which post was then given to Ambassador Fulvio de Suvich, who then resigned from his post as Ambassador to the United States. The executive management is still in the hands of Frigessi.

Aside from his position in the *Riunione*, Frigessi is president or vice president of the following Italian and foreign insurance companies:

Vers.-Ges. "L'Assicuratrice Italiana," Mailand
Fonciere, Allg. Versicherungsanstalt, Budapest
L'Orient, Versich.-A.-G., Istanbul
Vers.-Ges. "Protectrice"-Accidents, Paris
Vers.-Ges. "Protectrice-Vie," Paris
"Bulgarischer Phonix," Sofia, usw.

Furthermore he is vice president of the Italian Naval and Aeronautical Register, comparable to Lloyds Register. Until 1941 he was also a vice president of the National Fascist Confederation of Credit and Insurance Enterprises and a member of the Federal National Fascist Association of Insurance Carriers. He was, furthermore, a vice president of the Association of Italian Stock Companies and a vice president of the Federal National Fascist Association of Industrialists; and finally a member of the Italian Chamber of the International Law Association. It is understood that all these official or semi-official positions had to be given up by Frigessi as the German pressure of elimination of Jewish influence from Italian public life increased.

This pressure also explains why Frigessi's co-manager, Dr. E. Marchesano, constantly increased his powers in the company. Marchesano, who is an insurance attorney, resides in Milan, 38 Via Manzoni. He was called to Trieste to represent the company in all transactions in which Frigessi's appearance was considered undesirable. However, Marchesano knows the trade and is thoroughly familiar with the domestic Italian insurance situation. He occupies a seat on the board of directors of the following foreign insurance companies, all associates of the Riunione concern:

Internationale Unfall.-u. Schadensversicherungs-A.-G., Vienna
"Agricola-Fonciera" Allg. Versich. A.-G., Bucharest
Rossija-Fonciere, Versicherungs-und Ruckversicherungs-Ges., Belgrade

An important publicity and intelligence organ of the Riunione is L'Ufficio Turistico della Riunione Adriatica di Sicurta (UTRAS), established in November 1933, in the form of a company with limited liability, with principal office in Trieste, and fully owned by the Riunione. The UTRAS functions as a travel, ticket, and information agency in all big and small cities of Middle and Eastern Europe, and is recognized by the Axis governments and State railroads, aviation lines and shipping companies. It has functions similar to those of the American Express Company. But it must be kept in mind that UTRAS is an important informant for the Gestapo and the Italian secret police on international travel, plans and cargo movements, as in many countries UTRAS is the only service organization to issue international railroad and airplane tickets. In this capacity UTRAS has been authorized by the German-Italian Foreign Exchange and Control Office to fulfill functions similar to our Foreign Funds Control of the Treasury.

The assets of the Riunione are heavily invested in realty, in an amount of about 5 billion lire. According to the latest statistics, the Riunione owned 50 office buildings on Italian ground, of which 11 were in Trieste, 8 in Milan, 2 in Bologna, 2 in Padua, and 1 each in Ancona, Asmara, Bari, Bolzano, Brescia, Cremona, Dessie, Ferrara, Firenze, Fiume, Genoa, Gorizia, Gradisca, Littoria, Monza, Naples, Parma, Pisa, Rome, Torino, Treviso, Tripoli, Udine, Varese, Venice, Verona, and Vicenza. Furthermore, the company owned 57 buildings abroad, of which 18 were in Czechoslovakia (9 at Prague), 4 in Germany, 9 in Yugoslavia, 5 in Rumania, 2 in Poland, 5 in Spain, 3 in Hungary; and also office buildings in Athens, Beyrouth, Brussels, Cairo, Istanbul, Paris, Rio de Janeiro, Sofia, and Tunis.

The total premium income of the *Riunione* in 1942 was 932,000,000 lire, as compared with 767,000,000 lire in 1941. This is about three-fourths of the volume of the *Generali* business. The strength of the *Riunione* lies in property, marine and casualty insurance, while in life insurance it underwrites only about one-tenth as much as *Generali*. Its profits in 1942 were 12,200,000 lire.

Balance sheet data for *Riunione* are given in Table 8 following:

TABLE 8. BALANCE SHEET DATA OF THE RIUNIONE ADRIATICA, 1936-40

	1936	1937	1938	1939	1940
LIFE					
Assured capital	4,503,475,544	5,018,925,216	5,146,675,946	5,211,767,456	5,534,817,660
Subscribed premiums	187,862,183	227,325,774	228,766,028	203,629,721	231,989,402
Net premiums	146,759,905	189,280,882	190,605,650	165,861,642	193,937,078
Net losses	68,381,020	76,012,667	116,385,227	124,071,093	115,759,635
Commissions, expenses and taxes	49,693,489	57,940,497	56,267,907	58,479,320	61,866,454
Capital reserves	1,066,647,992	1,161,837,289	1,233,704,266	1,300,358,935	1,407,643,317
Net loss reserves	10,466,320	12,464,389	16,908,290	24,547,773	23,390,311
FIRE					
Subscribed premiums	173,099,600	174,179,276	185,826,989	186,293,880	193,532,238
Net premiums	102,739,577	102,881,988	110,795,521	109,433,020	113,975,511
Net losses	46,407,807	46,363,739	48,788,062	49,070,629	50,112,787
Net premium reserves	51,420,217	51,459,004	55,394,698	54,738,767	57,329,987
Net loss reserves	17,927,794	19,812,132	20,372,335	24,896,651	28,594,119
TRANSPORT					
Subscribed premiums	25,669,354	41,850,699	45,619,413	69,023,256	138,670,448
Net premiums	10,317,317	17,075,030	19,164,504	22,764,236	50,226,719
Net losses	6,673,938	8,987,583	12,888,410	11,247,493	20,283,971
Net premium reserves	2,128,029	3,545,881	5,696,094	5,969,550	10,986,357
Net loss reserves	6,510,244	10,704,514	11,216,730	12,713,901	27,594,119

TABLE 8. BALANCE SHEET DATA OF THE RIUNIONE ADRIATICA, 1936-40 (continued)

	1936	1937	1938	1939	1940
HAIL					
Subscribed premiums	20,573,254	25,431,684	23,759,160	28,842,620	28,079,485
Net premiums	7,651,014	10,345,396	10,792,666	14,003,040	15,343,501
Net losses	8,411,899	8,750,746	7,027,116	15,135,841	13,857,180
Net premium reserves	9,130	10,514	11,598	10,020	8,991
Net loss reserves	26,147	28,347	90,598	47,324	19,457
BURGLARY					
Subscribed premiums	11,217,244	11,953,305	13,452,156	11,731,514	12,600,424
Net premiums	8,063,358	6,420,862	9,466,616	8,148,852	8,298,112
Net losses	3,580,373	4,022,636	4,192,889	3,499,298	3,226,177
Net premium reserves	4,096,906	4,223,168	4,722,146	4,043,390	4,163,270
Net loss reserves	1,162,393	1,129,739	1,311,954	1,245,935	1,577,464
MISCELLANEOUS					
Subscribed premiums	39,240,430	37,778,921	40,425,890	40,897,234	45,487,185
Net premiums	14,235,735	14,567,279	14,253,287	12,774,159	16,909,142
Net losses	8,201,711	8,258,894	7,650,432	7,490,124	5,053,035
Net premium reserves	6,003,652	7,350,370	8,293,458	7,074,808	8,415,570
Net loss reserves	7,888,270	7,759,254	8,975,186	7,749,480	10,751,270

Like the Generali, the Riunione controls several associate companies operating independently in Italy but financially completely dependent upon the Riunione. The reason for the existence of separate entities are the same as in the case of the Generali: preservation of local good will or creation of superfluous jobs.

The principal associate companies of the Riunione in Italy are the following:

(1) L'Assicuratrice Italiana. This company, with head offices at Via Alessandro Manzoni 38, Milan, writes accident, third party and fidelity insurance and also reinsurance. It has a subscribed and fully paid up capital of 18,000,000 lire.

The actual management lies in the hands of the central manager, Ing. Valentino Arangio-Ruiz, and the managers, A. Moiraghi and Dr. Carlo Pezzati.

(2) L'Italica Soc. An. di Assicurazioni e Riassicurazioni. This company, with head office at Via Monte Napoleone 23a, Milan, writes accident, burglary, fire, hail, third party, plate glass and transport insurance. It has a subscribed capital of 4,500,000 lire of which 3,500,000 lire are paid up.

The following are the directors of the Company: Chairman, E. Scalini; Vice Chairman, V. Casalini.

The management is in the hands of the manager, F. Nuti, and the assistant manager, S. Gastaldi.

(3) Unione Subalpina di Assicurazioni. This company, with head office at Via Alfieri 22, Turin, writes accident, fire, third party, burglary and glass insurance. It has a subscribed capital of 10,000,000 lire, of which 5,140,000 are paid up.

The following are the directors of the company: Chairman, S. Ferracini; Vice Chairman, E. Marchesano.

The management is in the hands of the managers, Guido Bevilacqua and G. Guastalla.

Into this company have been merged La Subalpina, Turin, and La Protectrice, Paris (Italian business).

(4) Lloyd Siciliano, Soc. An. Italiana di Assicurazioni Marittime e Riassicurazioni Generali (now La Sicilia). This company, with head office at Via della Mercede 11, Rome, writes marine insurance and fire reinsurance. It has a fully-paid capital of 2,000,000 lire.

Chairman: G. Marchesano.

The management is in the hands of the general manager, A. Orlando.

This company is a joint enterprise of Riunione and Generali. The exact distribution of the stock is not known but each of the two concerns claims the controlling majority in La Sicilia.

(5) M. I. A. B. Mutua Italiana di Assicurazione Bestiame (M. I. A. B. Mutual Live Stock). This company, with

head office at Piazza Barberini 52, Rome, has a guarantee capital of 2,500,000 lire, fully paid.

A number of Italian companies, including S. A. Italiana Grandine, Riunione Adriatica, and Assicurazioni d'Italia are represented on the board of this company. The following are the directors of the company: Chairman, G. Raineri; Vice Chairman, G. Baroncini and E. Marchesano. The managing director of the company is D. Siniscalchi.

One gains the impression that both the Generali and the Riunione concerns have pushed their expansion at the cost of security and that their financial rating does not compare with a medium rating in this country. Of course, companies that pursue an aggressive policy (such as the Generali and the Riunione have in the past in the foreign field) can, with luck, win rich rewards. It is with those unorthodox profits that both companies have been able to meet the heavy losses which were bound to occur. Above all, both companies have derived actual benefits much less from insurance transactions proper than from financial operations in which they became skillful. Their wide-spread net of foreign affiliations and supports has permitted these Italian concerns to maintain accounts in more than twenty-five currencies, which were in a constant state of flux. The opportunities for large-scale arbitrage are obvious. Ara and Sulfina of the Generali, and their opposite numbers in the Riunione, have, throughout the years, been extremely lucky in such operations. Riunione and Generali have been intensely competitive. The methods adopted for that rivalry have often taken grotesque forms. Some observers have always felt that both companies spent considerable money in order to please the personal ambitions of their executives or simply to out-do the competitive concern for reasons of vanity.

C. The Istituto Group

On 1 January 1913 life insurance in Italy was to have become a monopoly, which monopoly was to have been exercised by a single insurance body in this branch, namely, the Istituto Nazionale Delle Assicurazioni (the National Insurance Institute). The avowed purpose of the Istituto was to make monopoly profits available for social welfare expenditures and to absorb the majority of the business of the other companies, particularly of the foreign companies. But in practice the monopoly plan presented serious inconveniences. The Fascist government brought about an immediate revision, in consequence of which, with the decree of 9 April 1923, private companies were again re-admitted to the business of life insurance in Italy along with the Istituto. The Istituto reserves two important privileges: first, there is a complete guaranty of its policies by the State Treasury; second, the peculiar relationship of the Istituto to the competing private insurance companies is that the latter are required to cede to the former certain proportions of the premiums received, thus acting as reinsurers by compulsion. The amount fixed is 40 percent for companies operating within ten years from the date of authorization, decreasing to 30 percent in the second decade, 20 percent in the third decade, and 10 percent for companies operating beyond the third decade.

Under these arrangements the Istituto is an insurance monopoly which has only the name in common with monopolies established in other countries. It is not a joint State-owned company, nor is it a mutual association. It is a State enterprise in that the State Treasury guarantees its policies, and its profits are the property of the State. Its relation with private enterprise is one of free competition, without right to surrender by the private companies of a quota on each risk examined, but without option of refusing business which seems undesirable.

Although the Istituto claims to be autonomous in its administration, it is practically an annex of the Italian Treasury. It is called upon by the government as the chief subscriber of Treasury bonds, and lends the insured's money to government-controlled institutions. The Istituto thus plays a role of primary importance in financing the Fascist State, especially in works of national character: railroad construction, land improvements, sanitation and housing, and real estate designed for housing purpose.[1] In 1942 the *Istituto* had Treasury bills and State bonds in the amount of 1,500,000,000 lire in its portfolios; 231,000,000 lire were expenses as loans for public works. The total of Treasury bonds purchased by the *Istituto* since 1929 now amounts to 2,700,000,000 lire.

But the *Istituto* also competes with all private Italian life insurance companies, and makes commercial profits out of the contracts accepted.

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[1] In 1939 the *Istituto* participated in Italian public institutions with the following subscriptions:

Istituto Mobiliare Italiano	L. 15,060,000
Enciclopedia Italiana	3,000,000
Azienda Carboni Italiani (A.Ca.I.)	30,000,000
Azienda Minerali Metallici Italiani (A.M.M.I.)	15,000,000
Banca d'Italia	15,000,000
Consorzio Naz. Credito Agrario di Miglioramento	13,500,000
Consorzio Credito Opere Pubbliche	20,000,000
Istituto di Credito Imprese Pubblica Utilita	4,500,000
Istituto di Credito Navale	1,500,000
Ente Colonizzazione Libia	5,000,000
Banca Nazionale del Lavoro (Sezione Autonoma di Credito Fondiario)	10,000,000
Banca Nazionale del Lavoro (Sezione Autonoma Credito Alberghiero e Turistico)	6,666,666
Acquedotto del'Africa Orientale Italiana	2,500,000
Total	L.141,726,666

Recently, when the AGIP (Central State Petroleum Company) took over all British and American oil and petroleum interests in Italy, and acquired a State monopoly for the whole Italian oil industry - acting at the same time as a petroleum coordinator for the Italian Army and Navy - its capital was increased from 500 to 1,000,000,000 lire in view of the large allied holdings in Italy. The government subscribed 60 percent of the newly issued capital, while 40 percent was compulsorily subscribed by the State insurance institutes.

The year 1942 was the busiest ever experienced by the *Istituto*, Senator Bevioni reported to the Duce in July 1943. There were 5,000,000 policies circulating, totaling 30,000,000,000 lire. The increases in 1942 were 720,000 policies aggregating an amount of 5,000,000,000 lire insured. The cash and investment reserves rose by 1,040 to 7,740 million lire and the real estate reserves by 40,000,000 to 500,000,000 lire. The *Istituto* bought 1,500,000,000 lire in Treasury bonds of the current series, thus increasing its holdings to 2,700,000,000 lire. The State received 34,500,000 lire out of last year's profits. The same amount was allocated to the insured.

The total production in 1942 was 5,892,000,000 lire, as compared with 4,192,000 lire in 1942. The business in force has risen to 1,427,000,000 lire against 968,000,000 lire at the end of 1941. The *Istituto* reported a profit of 83,600,000 lire which compares with 81,300,000 lire in 1941.

The *Istituto* thus reported the following percentage increases for 1942 over 1929:

	1942 as percent of 1929
Number of policies	509
Annual production	364
Capital investment	271
Premium income	235
Net profit	216
Technical reserves	323
Total assets	373

The status of the Istituto, according to its program is that of private enterprise. However, the presence of government and party officials on every level and the fact that representatives must be good Fascists largely nullify this claim. The Chairman of the Istituto, State Senator Giuseppe Bevione, has a seat in all major governmental and quasi-governmental agencies. He is a member of the corporate council of the Credit group, presided over by the Minister of Corporations. He is the representative for the Istituto in the National Fascist Institute for Social Security. He is a member of the Fascist Senate. He is, furthermore, on the board of the Assicurazioni d'Italia (LE), of the Fiume, of the Previdente, of the Societa Italiana di Assicurazioni Credito, and of the Unione Italiana Riassicurazioni.

According to Swiss sources,[1] the board of directors of the Istituto has now been disbanded in connection with the imminent nationalization of the insurance industry and has been placed under the control of a commissioner who takes his orders from the Ministry for Corporative Economy in the puppet Fascist Republican Government. The commissioner is a Dr. Alberto Troilo.

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[1] Neue Zuercher Zeitung, 13 March 1944.

The Istituto has transgressed the sphere of life insurance, and acquired shares in property and casualty insurance companies. The main instances are the Assicurazioni d'Italia,[1] of Rome, and the Fiume,[2] of Fiume, which are officially listed as affiliate companies of the Istituto. Chairmen and vice-chairmen of both organizations are interlocked. These companies underwrite accident, burglary, fire, marine, and aircraft insurance as purely private enterprises, without the privileges granted to the Istituto. Due to their official backing, they have secured a substantial part of the business in occupied countries, and branch offices have been opened in various cities of the Balkans since 1940. Beyond these companies the Istituto maintains "working arrangements" with the Switzerland of Zurich and with Italo-Argentina of Buenos Aires. Both companies are on the Proclaimed List. Similar arrangements existed with the (Italo)-Brasileira of Sao Paulo, but have been recently severed upon Allied intervention.

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1. Head Office: S. Basilio 14, Rome; Insurances written: all classes (except life); Capital: subscribed and fully paid up, L. 15,000,000; Directorate: Chairman, G. Bevione, Vice Chairman, I. Giordani; Management: General Manager, Dr. C. Arcidiacono, Assistant Managers, U. Pellegrini, A. N. Merlo and P. Vidas.
2. Head office: Corso Vittorio Emanuele 39, Fiume; Insurances written: accident, burglary, fire, marine and aircraft; Capital: subscribed and fully paid, L. 12,000,000; Directorate: Chairman, G. Bevione, Vice Chairman, Dr. I. Giordani; Management: General Manager, Dr. G. Ancona.

A foreign affiliate of the Fiume, and therefore of the Istituto is the Astra, Budapest. Fiume also owns La Terra, a small hail insurance company in Milan.

D. Smaller Companies

In comparison with the three large concerns, other companies play only a minor role. The principal groups among them are the Milano Group, the Torino Group and the Fondiaria Group.

1. The Milan Group: Compagnia di Assicurazione di Milano (Milan Insurance Company, Ltd.). The Milano is the next largest company after the three leading concerns[1] with a premium income of 22,000,000 lire. The Milano, which is one of the oldest of the Italian group, derives most of its business from the industrial centers around Milan and practically all its agencies are centered in this area. The Milano writes life, fire, and a general business of limited rank, including accident, burglary, hail and third party insurance.

Head offices of the company are at Via Lauro 7, Milan. It has a subscribed capital of 64,000,000 lire, fully paid.

The directors of the company are: Chairman, A. Marietti, Vice Chairman, E. Pescini. The General Manager of the company is A. Brunello and the Deputy General Manager F. Moretti.

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1. Associate companies: Anonima Generale, Milano; Ansonia, Milano.

2. The Turin Group: Compagnia Anonima D'Assicurazione di Torino (Turin Insurance Company, Ltd.). The Torino companies have a particular standing in Italian insurance in that they have the international reputation of being the most solid insurance enterprises in Italy. In contrast to the expansive and ambitious management of the leading three groups, the Torino companies are known for conservative business methods; the quality of their portfolios outranks all the other companies. The Torino companies are:

Compagnia Anonima D'Assicurazione di Torino, a stock company
Reale Mutua Societa di Assicurazioni, a mutual company.

The Torino was established in 1933 and has its offices at Maria Vittoria 18, Turin.

It writes the following insurances: accident, burglary, fire, hail, life, third party, transport and glass.

The capital of 18,000,000 lire is fully paid.

The directorate is under the chairmanship of A. Regis. The management is in the hands of: General Manager, C. Ruffini; Assistant Managers, Dr. A. Gallina and G. Prinetti.

The Torino has two associate companies which are fully owned by the Torino mother enterprise but which have only a minor importance in the Italian insurance industry:

La Vittoria Compagnia di Assicurazioni Generali, Milan
La Preservatrice S. A. Italiana di Assicurazioni e Riassicurazioni, Rome.

La Vittoria (formerly the Italian Excess Insurance Company), with head office at Corso Vittorio Emanuele, 41, Milan, writes accident, sickness, burglary, fire, marine, motor car, third party, hail and general insurance. Its capital of 12,000,000 lire is fully paid. C. Ruffini is Chairman of the Board and Managing Director. The General Manager is M. Belloni. This company was established in 1921.

La Preservatrice, established in 1922, has head offices at Piazza di Pietra, 26, Rome. It writes accident, fire, burglary, plate glass, transport and third party insurance and also reinsurance. Of its capital of 10,000,000 lire, 3,700,000 lire are paid up. The Chairman of the Board is C. Ruffini and the General Manager of the company is L. Bastalgi.

Reale Mutua Societa di Assicurazioni was established in 1828 and is the oldest and strongest Italian mutual company. It has head offices at Rue Corte d'Appello 9, Turin; and writes the following classes of insurance: accident, fire, burglary, life, plate glass, third party, hail, frost and marine. Before the war it did a considerable business with British companies. Foreign correspondents in London were the Sterling Office of London and Paris.

The board of directors of Reale Mutua has as its Chairman and Managing Director, G. Brezzi and as Vice Chairman,

U. Sartirana. The management is in the hands of its General Managers, S. Borazzo and Alberto Bellavita.

The Reale Mutua controls one domestic company: Savoia Societa Anonima Italiana D'Assicurazioni.

The Savoia, with head office at Via Dante 8, Genoa, writes the following classes of insurance: accident, fire, marine, third party, burglary and reinsurance. It was established in 1896. Its capital of 4,500,000 lire is fully paid.

The board of directors of Savoia has as its Chairman, S. E. Tommaso Bisi. Its General Manager is Carlo Barbieri.

Torino and Reale Mutua work on a competitive basis but the selective standards practiced by both companies are equally high and their portfolios equally good. Most of the industrial business of the Province of Turin is in their hands.

The management of the Torino companies reflects their orthodox spirit. For years their executives have been known to be the most reliable of all insurance men in Italy.

3. The Fondiaria Group. This includes:

La Fondiaria Vita
La Fondiaria Incendio
La Fondiaria Infortuni
La Previdente
La Reale Grandine

La Fondiaria Vita, with head office at Piazza Emanuele 6, Florence, was established in 1880. The capital of

32,000,000 lire is fully paid; managing director, Alberto Perrone; general manager, Umberto Fecci.

La Fondiaria Incendio, with head office at Piazza Vittorio Emanuele 6, Florence, was established in 1879. Its capital of 25,000,000 lire is fully paid.

Its directors are: Chairman, E. Trigona; Vice Chairman, R. Niccolini; Managing Director, A. Perrone. The management is in the hands of: General Manager, Umberto Fecci; Manager, G. Taruffi.

It writes the following classes of insurance: fire, burglary, motor car, all risks, marine and reinsurance.

La Fondiaria Infortuni, with head office at Piazza Vittorio Emanuele 6, Florence, was established in 1909. Of its capital of 5,000,000 lire, 3,003,000,000 lire are fully paid.

Its directors are: Chairman, Emanuele Trigona; Vice Chairman, R. Niccolini; Managing Director, A. Perrone. The management is in the hands of: General Manager, Umberto Fecci; Manager, E. Mansutti.

It writes the following classes of insurance: accident, third party, plate glass and reinsurance.

La Previdente, with head office at Via San Vittore 37, Milan, was established in 1917. Of its capital of 5,000,000 lire, 2,000,000 lire are fully paid.

The Chairman of the board is E. Scalini and the Vice Chairman is R. Niccolini. The General Manager of the company is G. Scarpellon.

It writes the following classes of insurance: accident, burglary, fire, plate glass and third party. Life business is transacted by the "La Previdente Vita" (same management).

La Reale Grandine Societa Anonima di Assicurazione contro i Danni della Grandine, with head office at Piazza del Francia 1, Bologna, was established in 1891. It has a fully paid capital of 2,250,000 lire.

The Chairman of the board of directors is Count G. Isolani and the Vice Chairman is F. Cavazza. The General Manager of the company is H. Altoviti.

It writes hail insurance and reinsurance.

Finally, the Societa Cattolica di Assicurazione should be mentioned. This company, with head office at Via Adua 4, Verona, is known for its sound management and has among its customers practically only circles connected with the clergy. It insures most of the papal and ecclesiastical property in Italy. It was established in 1896.

It has a subscribed and fully paid capital of 2,349,165 lire.

The board of directors is as follows: Chairman, Dr. E. M. Passi; Vice Chairman, G. Delaini; and L. Montresor. The General Manager of the company is L. Casati.

E. The Reinsurance Groups

Reinsurance is a secret trade. Even within the boundaries of a country, the reinsurance connections of the operating companies are hardly known and facts and figures even are not divulged among members of concerns and affiliated companies. For the outsider, therefore, reinsurance relations are always a matter of conjecture and even superintendents of insurance in Europe are kept in the dark in this respect. Full information can only be expected when the companies' files are inspected. With regard to Italy, however, it is safe to assume that because of the increasing contraction of the European market, Italian insurance has used all the following five groups simultaneously:

(1) Italian professional reinsurance companies;

(2) Italian direct operating insurance companies transacting reinsurance as a special class of business;

(3) German and German-controlled companies, both professional and direct operating companies;

(4) Swiss Reinsurance Company and affiliates;

(5) Munich Pool for the coverage of excess risks.

As the reinsurers and direct companies transacting reinsurance distribute the risks accepted by way of retrocession and as the retrocessionaires, in their turn, retrocede in the second degree, Italian reinsurance is today probably spread evenly all over Europe.

In practice, Italian reinsurance in the first degree is carried by the professional Italian reinsurance companies, the Consorziale, the Unione, and the Roma.

The Societa Italiana di Riassicurazione Consorziale An. per Azioni (Consorziale) has its head office in Milan and was founded and is supported by the following companies:

> Cia di Assicurazione di Milan; Assicurazioni Generali, Trieste and Venice; Cia An. di Assicurazioni, Turin; La Fondiaria Incendio, Florence; Soc. An. Italiana Assicurazione Incendio (ex Co-operation), Milan; Soc. An. Italiana di Assicurazioni Infortuni, Milan; Soc. Cattolica d'Assicurazione, Verona; Soc. An. di Assicurazioni Ausonia, Genoa; La Fondiaria Infortuni, Florence; Alleanza-Securitas-Esperia, Rome; La Previdente Cia Italiana di Assicurazioni, Milan.

It is the most important reinsurance company in Italy and has a capital of 10,000,000 lire. The shares are held by the founder companies; Generali, Riunione, and Istituto together have the controlling majority and are represented on the board. According to the latest available information, Generali holds about 25 percent of the shares. Thirty percent of the capital is paid up. General Manager: Edoardo Romagnoli.

The Consorziale was originally concerned only with fire, accident, burglary and hail business, and life insurance was conducted only recently.

A very definite policy is pursued with respect both to reinsurances written and to retrocessions. The only Italian fire business retroceded to external interests is that received from founder companies, and it is consequently of the best class; it is retroceded either by individual treaties, or included in a pool of business which is wide-spread in character, being constituted from a share of some of the best Italian business available - generally one line of the first surplus. Business accepted from abroad is in part retroceded to the founder companies.

The Unione Italiana di Riassicurazione was established in 1922 by fifty-six Italian, twenty French and two Swiss insurance companies. Among the Italian was the Istituto, as owner of one-third of the share capital.

The Unione writes all classes of reinsurance and has a subscribed capital of 21,000,000 lire, of which 9,000,000 are paid up.

The Unione has been entrusted by the State with the administration of war risks for marine insurance on cargo and hulls of vessels, for account of the Consorzio Italiano. Management: Bruno de Mori, a fervent Fascist.

The Roma is the result of the withdrawal of Lloyds from the Mediterranean business and the expulsion of British facilities from the Continent. The Roma was founded on 21 October 1940 with a capital of 200,000,000 lire, of which 100,000,000 lire were immediately subscribed by the Generali, 86,000,000 by the Istituto, 20,000,000 by the Riunione, and 12,000,000 by the Unione; the rest was distributed among four other Italian groups. 12,000,000 were subscribed by the Milano, 12,000,000 by the Fondiaria, 3,000,000 by the Consorziale, which in itself is related with the Istituto, and 2,000,000 by the Torino.

In earlier days the company heavily publicized its reinsurance capabilities in Europe and in South America, but little has been heard of it lately. It is probably now closely cooperating with the Munich Pool and helps diversify the risks in the heavily shrunken European reinsurance market.

The Roma is interlocked with the government and leading Italian insurance concerns through the personnel of its directorate: Senator G. Bevione, also president of the Istituto; Volpi di Misurata, also chairman of the Generali (now removed from office); Ambassador Suvich, also president of the Riunione.

According to French reports, the executives of the Roma are at present the following:

President:	Dr. Francesco Boncompagni Ludovisi, Principe di Piombino.
Vice President:	Giuseppe Bevione.
General Managers:	Giuseppe Bufano; Giorgio Ugo Ugolini.
Assistant Manager:	Manfredi Oxilia.

German insurance interests have opposed the Roma and described it as a "miscarriage," declaring that Italy is too small for the necessary distribution of risks of so large an insurance concern. Probably due to these difficulties, *Roma* only started operations late in 1941 and the results are more than meager in comparison to the capital and the jurisdiction vested with the concern.

German sources[1] reveal that in 1944 the *Roma* balance sheet shows a profit of only 513,515 lire as compared with a loss of 680,446 lire in 1943. On the credit side appear bank deposits in the amount of 17 million lire, securities in the amount of 119 million lire, real estate holdings for 7 million lire, credits with other companies in the amount of 44 million lire, and commissions for 1-1/2 million lire. Technical reserves were established for 58 million lire and there are debts to other companies in the amount of 10 million lire and also an item for security losses and foreign exchange losses in the amount of 15 million lire.

F. Foreign Companies Operating in Italy

In the last twenty-five years the share of foreign companies operating in Italy has fallen from 40 percent to 4 percent of the domestic business. In 1939 foreign insurance companies obtained little more than 3 percent of the total premium income - mostly in fire and marine lines.

American business was nil.

The foreign companies which were then represented in Italy were the following:

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[1] *Nachrichten fuer Aussenhandel*, 28 April 1944.

Abeille-Accidents, Paris - P. Ponzani, via Cusani 5 Milan.
Abeille Grele, Paris - V. Garbin, via Cusani 5, Quartiere Postale No. 1, Milan.
Abeille-Incendie, Paris - V. Garbin, via Cusani 5, Quartiere Postale No. 1, Milan.
Abeille Vie, Paris - P. Ponzani, via Cusani 5, Milan.
Agrippina See-Fluss-und, Landtransport, V.-A.-G., Cologne - E. Wallerstein & Co., via Monte di Pieta 24, Milan. Dottore Gustavo Escher, via Vittoria Emanuele 62, Catania (Sicily).
Allience Assurance Co., Ltd., London - Bevington, Vaizey & Foster, Ltd., via Giulini 3, Milan (fire accident and marine).
Anglo-Elementar V.-A.-G., Vienna - Piazza Unita 3, Trieste.
Baloise Fire Insurance Co., Basle - Comm. Attilio Carmi, Piazza Scoule Pie 7, Genoa.
Basler Transport-V.-G., Basler - Cav. C. P. Olivero, Piazza delle Vigne 6, Genoa.
British Commercial Insurance Co., London - Amedeo Natoli, Corso del Littorio 1, Palazzo Crespi, Milan.
Cie. d'Assurances Generales Accidents, Paris - L. Galanti, 2, via Meravigli, Milan.
Cie. d'Assurances Generales contre l'Incendie et les Explosions, Paris, Luigi Galanti, 2, via Meravigli, Milan (fire and explosions).
Commercial Union Assurance Co., Ltd., London - G. Levi, Branch Manager, via Manzoni 17, Milan.
Donau, Allg. V.-A.-G., Vienna - E. Pignalosa, Largo Goldoni 44, Rome (fire, accident, third party, burglary, marine and glass).
Federale (la), Zurich - Piazzale Luigi Cadorna 7, Milan (fire, marine, etc.).
Helvetia Schweiz. Unfall und Haftpflicht, Zurich - Otto Lardelli, via Ugo Foscolo 1, Milan (accident and third party).
Kolner Lloyd Allgemeine V.-A.-G., Cologne - E. Wallerstein & Co., via Monte di Pieta 24, Milan (marine).
Liverpool and London and Globe Insurance Co., Ltd., Liverpool - Bevington, Vaizey & Foster, Ltd., Corso del Littorio 11, Milan (fire and accident).

As a result of Italian Trading-with-the-Enemy legislation the number of foreign companies has since drastically decresed.

In 1940 English and French companies had been placed under government administration, which took the form of "syndicated control," "sequestration" or "liquidation."

In a "syndicated control" the government appoints a controller who exercises on an insurance firm the fullest discretionary control. The controller is under the supervision of the Prefect of the Province. Actually, syndicated control is only the preliminary step to liquidation. It will be seen from the following that some British firms have been placed under syndicated control.

In the case of sequestration the purpose of government interference is less the liquidation than the continuation of the insurance firm. The custodian represents, to all intents, the firm entrusted to him and continues to do business, requiring, however, for any acts beyond the scope of the regular management, a license by the Ministero delle Corporazioni. A quarterly account must be given to the department. The Decree of 28 June 1940 provides specifically, in the interest of the insurance enterprise and the policyholders, that for insurance firms under sequestration, the custodians may in their discretion provide for the transfer of portfolios to Italian companies. The custodian is not necessarily the successor to the agent licensed with the Italian government on behalf of the foreign insurance company, but in most cases the official agent has been dismissed and the custodian has taken his place.

Liquidation is decreed under special conditions set forth in the Decree of 28 June 1940, and has been applied in cases where insurance companies have been deemed to be no longer in a position to fulfill their obligations. This measure has been applied against most of the British companies operating in Italy.

The following is the position of the English, French and German companies according to the latest information available:

1. English Companies in Italy.

Commercial Union: Founded in 1861 in London. Authorized to do business in Italy in 1921 for these branches: fire, burglary, accident and transport insurance. Office in Milano, Corso del Littorio No. II.

In 1940 National Councilor Paolo Pedani was appointed custodian. After he was called into the Army, Giuseppe Sozzani, accountant, was appointed custodian in his place; Authority: Decree of 25 October 1941, published in the Gazzetta Ufficiale No. 279 of 26 November 1941. Last annual premium income in Italy about five million lire.

Liverpool, London and Globe: Founded in 1836 at Liverpool. Authorized to do fire and burglary business in Italy since 1928. Office at Milano, Corso del Littorio No. II. By ministerial decree of 29 September 1940, published in the

Gazzetta Ufficiale of 24 October 1940, National Councilor Francesco Ferrario was appointed custodian. Under the successive decree of 28 May 1941, National Councilor Ernesto Fodale was appointed in his place. Last annual premium income in Italy about two hundred fifty thousand lire.

Norwich Union: Established in 1797 in Norwich, England. Authorized to write transport, fire and accident business in Italy since 1910. Office in Genoa, Via Petrarca 2. Under an agreement made on 14 May 1940 with La Fondiaria of Florence, the Norwich Union ceded its entire portfolio to the Fondiaria. By decree of 1 September 1940 the sequestration of the Norwich portfolio was ordered. Its liquidation was ordered by decree of 13 January 1941 published in the Gazzetta Ufficiale No. 33 of 7 February 1941, and National Councilor Ettore Giannantonio was appointed liquidator. Last annual premium income about three million lire.

Sea Insurance Company: Founded in 1875 at Liverpool. Authorized to write transport insurance in Italy since 1918. Office in Genoa, Via San Lorenzo 12. By ministerial decree of 26 June 1940 published in the Gazzetta Ufficiale No. 155 of 3 July 1940, Franco Brusa, attorney, was appointed liquidator and the company placed in liquidation. Last annual premium income in Italy one million lire.

Sun Insurance Company: Established in London in 1710. Authorized to write motor, fire and accident insurance in Italy since 1925. Office in Genoa, Via Roma 8. By ministerial decree of 19 August 1940 published in the Gazzetta Ufficiale of 10 September 1940, the sequestration of the portfolio was ordered and National Councilor Arnaldo Dini was appointed sequestor. Last premium income in Italy, two million lire.

2. French Companies in Italy

L'Abeille Vie Accidents, Comp. anon. d'Assurances. Paris. Repr.: Avv. G. Pesenti, Milan, Via Cusani 5.

L'Abeille Grele, Incendie Grandine, Soc. anon. d'Assurances. Paris. Repr.: Gr. Uff. Ing. Vincenzo Garbin, Milano, Via Cusani 5.

Metropole Cie. d'Assurance contre l'Incendie. Paris. Gen.-Repr.: Frea Cav. Giovanni, Turin, Via Consolata 3.

Monde (Le) Cie. d'Assurance Vie. Paris. Repr.: L. Bianchi, Milan, Corso Venezia 14.

Monde (Le) Incendie. Paris. Repr.: E. Coussol, Milan, Corso Venezia Nr. 14.

Phenix (Le) Cie. Francaise d'Assurances sur la vie et contre Incendie. Paris. Repr.: Carestia dott. C. Pilade, Rome, Piazza di Pietra 26.

Le Secours-Incendie, Comp. d'Assur. Paris. Gen.-Repr.: Gr. Uff. Amedeo Natoli, Milan, I. Corso del Littorio.

L'Union Incendie et Accidents. Paris. Repr.: M. Faccode Lagarda, Genoa, Piazza della Vittoria 9.

3. German Companies in Italy

Agrippina, See-, Fluss- und Landtransport-Versicherungs-Gesellschaft. Cologne. Repr.: Milano Via Monte di Pieta 24 (MacKenzie Agency).

Allgemeine Elementar Versicherungs-Aktien-Gesellschaft in Wien. Repr.: Carlo Bardelloni. Milano, Via Victor Hugo I.

Donau-Concordia Versicherungs-A.G. Vienna. Repr.: Cav. A. Marchisio, Rome. Largo Goldoni 44 (Own building).

Kolner Lloyd, Allgem. Versicherungs-A.-G. Cologne. Represented by MacKenzie Agency (see Agrippina above).

Mannheimer Versicherungs-A.-G. Mannheim. Repr.: C. Natale, Naples, Via Sanfelice 38.

Nordstern Allgemeine Versicherungs-Aktien-Gesellschaft. Berlin. Repr.: Amministrazione Mackenzie. Genoa. 1 Piazza Marose.

Wurttembergische und Badische Vereinigte Versicherungs-Ges. Aktiengesellschaft. Heilbronn. Repr.: Hans Peter, Trieste. Via di Scorcola 15.

4. Japanese Companies in Italy.

Imperial Marine and Fire Ins. Comp., Ltd. Tokio. Repr: Ditta Ed. Canalifu Camillo, Genova, 63 Via Dante 63.

5. Swiss Companies in Italy.

La Baloise; founded in 1864; head offices Basle and Genoa; capital Swiss francs 5,000,000, of which half is fully paid; licensed to do business in Italy in marine and transport insurance; representative for Italy, Olivero Cesare, Genoa, 6 Piazza Vigne.

La Federal; founded in 1888 in Zurich; capital Swiss francs 5,000,000, of which Swiss francs 1,250,000 are fully paid; licensed to do business in Italy in transport, fire, burglary and related insurance classes; Italian head office at 7 Piazzale Luigi Cardorna, Milan.

Helvetia; founded in Zurich in 1894; capital Swiss francs 6,510,000, of which Swiss francs 2,170,000 are fully paid; licensed to do business in Italy in liability insurance; Italian representative, Otto Lardelli, Milan, 1 Via Ugo Foscolo.

Neuchateloise; founded in 1869 in Neuchatel, Switzerland; capital Swiss francs 8,000,000, of which Swiss francs 2,000,000 are fully paid; licensed for marine and transport insurance; Italian representative Arrigo Giambonini, Milan, 6 Via Borghetto.

La Suisse; founded in 1869 in Zurich; capital Swiss francs 10,000,000, of which Swiss francs 3,000,000 are fully paid; licensed to do transport, fire and burglary insurance; Italian representative, Aldo Gardini, 1 Piazza Senarega, Genoa.

Zurich; founded in 1872 in Zurich; capital Swiss francs 30,000,000, of which Swiss francs 21,000,000 are fully paid; licensed for accident, liability, burglary and automobile insurance; Italian representative, Carlo Coppa, Milan, 1 Via Sandro Sandri.

G. Italian Companies Operating Abroad

In sharp contrast to the vanishing foreign business in Italy, the Italian business in foreign countries is, at the present time, at its peak. This process is only partly attributable to Axis plunder of European wealth, and must also be analyzed in the light of historical developments.

Both the Generali and Riunione were established in Trieste which was the most important trading center of the Austro-Hungarian Monarchy. Trieste was the outlet to the sea, not only for Vienna but also for Czechoslovakia, Croatia, Hungary---all part of the same Empire. The Trieste insurance firms had been able not only to maintain their influence throughout the Balkans after the collapse of Austro-Hungary but to intensify and expand it after 1918, and especially when resentment against German firms became strong in Czechoslovakia, Yugoslavia, and to some extent in Hungary.

The foreign facilities and experience which these three leading Italian concerns have acquired in the foreign field furnish a key to the understanding of German-Italian cooperation in matters of insurance. The Italian partner is more a liability than an asset in some fields of cooperation, but in insurance the participation of the leading Italian firms has been considered from the very beginning highly profitable and useful for the establishment of the New Order. The Italians have had much longer experience than the Germans not only in the Balkans but in South America and the Iberian Peninsula. The Germans are also aware that Italians and Italian companies are more welcome in Spain and Spanish-speaking countries. The reiterated statements on joint insurance penetration and cooperation between Germany and Italy since 1940 must not, therefore, be taken as boastful Axis propaganda but as an expression of a policy which actually works for the benefit of both parties.

Under those circumstances, the vast foreign interests which the two leading Italian insurance companies always had have now been increased by allotments from occupied countries allocated to them by the Germans for historical, military and especially technical reasons, namely, to diversify German risks.

The allotment of the occupied areas between the Axis partners[1] follows no single pattern. In some countries their shares are equal; in others the Germans accept a minor party, although they conquered the country, and give the lion's share to the Italians; while in others the Germans assume the lead to the detriment of the strong positions which the Italians had before the war.

In such countries as Austria, Poland, and Czechoslovakia, the leading Italian concerns operate side by side with the Germans but Italian business no longer enjoys the position which it held before Germany invaded these countries. In other countries, however, the Germans have abstained from competing or interfering and the Italians are free to develop their already existing organizations; this is true in Croatia, Yugoslavia, Dalmatia, and Greece.[2] In still other countries,

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[1] Compare report EP 241 of the Office of Economic Warfare. Additional data which has been obtained after the completion of the report (July 1943) are included in the present report.

[2] Since the downfall of Mussolini, the Germans no longer "protect" Italian insurance interests in the Balkans.

France, Roumania and the Iberian Peninsula, Germans and Italians penetrate on a competitive basis. Finally, there is a fourth group in which the Germans nurse Italian business and try to give it a status it lacked (Holland and Scandinavia).

The situation may be summarized as follows for the individual countries:

The Italian position in Austria is strong, but not as compared with the situation before the Anschluss. The Italian interests center around the Erste Allgemeine Schaden of Vienna, which is a subsidiary of the Assicurazioni. This company has become the nerve center for the whole Italian-Balkan position. The Erste Allgemeine has opened numerous offices throughout the Balkans, particularly in places where the Trieste companies of the former Austro-Hungary monarchy had a foothold.

In the former Russian-occupied territories of the Baltic States, Italian influence was eliminated by the establishment of the Russian insurance monoply Gosstrach. The Germans continue to use that instrument without having reinstated the rights of their Italian partners.

In Bulgaria, the German penetration is overshadowing Italian positions. The Riunione and Generali are represented by agencies and by companies organized under the laws of Bulgaria (Bulgaria, Vitoscha). In Czechoslovakia, Italian influence has been greatly reduced by the Germans; in Slovakia, four insurance groups are active, only one of which is Italian.

In France, however, Generali and Riunione have very considerable portfolios. Concorde and Protectrice are Italian-owned. German influence used to be nil; since the occupation the Germans have skimmed the cream off the British business in France but the Italian position has also been strengthened. Numerous new licenses for Italian companies and their agents have been issued by the French insurance commissioner.

In Alsace-Lorraine, the portfolios of all French and British companies have been transferred to German and Italian companies under a German decree; Italian influence, therefore, has increased.

Among the foreign companies in Hungary, Italian influence was always the strongest numerically and quantitatively, and the Italian companies earned more than 20 percent of the total premium income. Istituto, Generali and Riunione are represented both by agencies and by controlling stock ownership in local companies. The benefit resulting from the multiple annexations, "aryanizations," and confiscations undertaken in Hungary, fell chiefly into Italian hands. The Italians also got most of the business of the Czechoslovakian and British firms which had excellent contracts on industrial and sugar mill risks.

In Greece, Generali, Riunione and Fiume (Istituto-owned) previously had large shares in marine business. After having taken over the British agencies, they practically had a monopoly until 1943, when, with German assistance, Greek "national" interests were revived to the detriment of the Italians.

In Holland and Belgium, Italian influence was never important. In 1939 Generali formed a reinsurance company, the Algemeene Herverzekering, with a share capital of one million guilders, fully paid, of which 90 percent was subscribed by the Erste Allgemeine, which in turn is a subsidiary of the Generali. It is not known whether this company is doing a substantial business because the Germans are active in the Dutch market and the Dutch show little inclination to insure with foreign companies. In order to aid the Italian interest, the Germans had to issue an official recommendation to Dutch representatives and brokers to place part of their risks with Italian companies now operating in Holland.

Italian influence in Luxembourg was completely eliminated by the Germans. In Scandinavia Italian business is insignificant.

Prior to the occupation of Poland, the Italians held important positions aside from direct operating agencies of the Generali and Riunione. The Generali owned the Polonia, and Riunione the Piast. In the General Government seven German and two Italian companies are now active. In the annexed territories Riunione and Generali have been eliminated as direct operating companies and their portfolios transferred to the Erste Allgemeine, Vienna. In Silesia the Germans have taken away from the Italians a share of their business which has been transferred jointly to the Erste Allgemeine of Vienna and to the Allianz. In compensation the Italians have received portfolios from the dissolved Polish companies. In the last instance it may be said that the Italian position in Poland has not deteriorated, although in absolute figures it is greatly inferior to the interests which the Germans now hold in Poland.

In Roumania, Italian interests are associated with the Generali, Agricola, Fonciera, Steaua-Romaniei, while the Reunione works directly in Roumania. Steaua Romaniei is now jointly owned by the Italians and the Germans. It does not appear that the Italians have further expanded their sphere of interest by operating additional offices, even though the existing Italian offices have added considerably to their activities. Insurance is now completely dominated by the German-owned Dorna Vatra (Jauch and Huebener group).

Italian interests in Yugoslavia were predominant until 1944. Aside from the numerous agencies which the Generali and Riunione maintain in every city, Generali acquired the Beogradska Zadruge, while the Riunione obtained the business of Sobija and the Rossija Fonciere. The Italians had, in addition, a right of exclusivity and could legally veto the admission of a newcomer in the country. It was only after the Italian surrender in 1943 that the Italian opposition to the establishment of the National Croatian Reinsurance Company was broken, and the company was established with headquarters in Agram.

Appendix. ITALIAN INSURANCE LAWS

Royal Decree-Act of 29 April 1923 No. 966 on the Transactions of Private Insurance, converted into the Act of 17 April 1925, No. 473 (with later Amendments).

Title II.--Life Assurance.

Chapter II.--Transactions of Assurance on Human Life by Private Companies.

Art. 18

National insurance companies desirous of transacting the business of assurance and reassurance of human lives, foreign insurance companies which intend to transact in the kingdom the business of assurance of human lives, and those which in order to transact the reassurance in the aforesaid class, intend to establish a legal representative in the kingdom, shall first obtain the authorisation thereto.

The authorisation is granted by a decree of the Minister of Corporations to be published in the "Gazetta Ufficiale" of the kingdom.

The aforesaid authorisation is subject to a governmental authorisation fee, fixed by Royal Decree of 24 November 1919, No. 2163, for the authorisations given by the Minister of Finance in accordance with the provisions of the Royal Decree of 4 September 1919, No. 1620 (modified by the law relating to governmental licences, approved by the Royal Decree of 30 December 1923, No. 3279).

Art. 19

In order to obtain authorisation to transact life assurance, the national companies shall submit to the Minister of Corporations 1/ an application in respect thereof, and shall furnish:--

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1/ The original title of the Ministry charged with the supervision of insurance business was the Ministry of Industry and Commerce, later on the Ministry of National Economics, and now the Ministry of Corporations.

(1) Proof of having been legally established, and in the case of a joint stock company or of a co-operative, of possessing a capital stock not less than ten millions lire of which at least five millions be fully paid, or in the case of mutual insurance companies, a guarantee fund not less than the aforesaid amount.

Notwithstanding this, in case of companies which transacted life assurance in the kingdom prior to the coming into force of the Act of 4 April 1912, No. 305, and ceded their portfolio to the Istituto nazionale delle assicurazioni, the Government has the power to give the authorisation subject to convenient warranties, independently from the integral fulfilment of the aforesaid condition.

(2) The proof of having deposited with the Cassa depositi e prestiti or with an issuing bank an amount of two millions lire in cash or in governmental securities.

The deposit shall be refunded if the authorisation is refused.

(3) The facts constituting the technical principles, i.e., the mortality and disability tables, and the rates of interest which are to be used in computation of premiums and mathematical reserve.

(4) An explanation of actuarial methods used for the computation of pure premiums, loadings and mathematical reserves.

(5) Tariffs of pure premiums and gross premiums.

(6) General clauses of insurance for various types of contracts.

The said clauses shall also contain provisions regarding paid-up reductions and surrenders.

National companies which intend to transact reinsurance business in the life section shall furnish proof of their legal establishment in order to obtain the respective authorisation.

Art. 20

In order to obtain the authorisation, the foreign life assurance companies shall, in addition to compliance with the provisions of Art. 19:--

(a) Name, in accordance with the form provided in Art. 230 of the Commercial Act, a general representative in the kingdom, who shall be an Italian citizen and resident in Italy, expressly conferring on him powers to represent the company, before the courts and before all the authorities of the kingdom, to conclude and sign the contracts and other documents relating to assurances written in the kingdom, and to carry through the necessary transactions for the establishment and the assignment of the legal deposits as provided in the present decree.

(b) Prove that they have been regularly transacting life assurance in their own country of origin for at least ten years.

(c) Furnish all other documents requested by the Ministry of Corporations.

The general and particular clauses of insurance contracts and all respective addenda shall be made in the Italian language.

Foreign companies desirous of establishing an agency in the kingdom, for the transaction of reinsurance in life business shall, in order to obtain the necessary authorisation, furnish proof of having complied with the provisions referred to in Art. 230 of the Commercial Act.

Authorisation shall not be given to foreign companies if in the respective country of origin Italian companies are not admitted to operate, or have not equality of treatment with national companies.

The Ministry of Corporations shall determine in a given case, the special terms for the admission of foreign companies which appear to be necessary, on account of the application of the aforesaid principle of parity in treatment.

Art. 21

By the decree of authorisation referred to in Art. 18 the Ministry of Corporations also approves the premium rates and clauses of policies issued by the companies.

Art. 22

The amendments of the documents and facts submitted to the Ministry of Corporations in accordance with the Art. 19 and 20 shall be approved by the same Ministry. They shall not take effect prior to the date of the decree of approval.

Art. 23

Those assurance companies, both national and foreign, which have obtained authorisation to operate in the kingdom, must establish and earmark in the manner set out in Art. 27 and 28:--

(a) A deposit of 500,000 lire to guarantee transactions which are to be paid in the kingdom.

(b) An initial fund of 1,000,000 lire included in the mathematical reserve. The deposits made in accordance with Art. 18 will be available for this purpose.

Art. 24

National and foreign companies transacting life assurance in the kingdom in accordance with the present decree are obliged to cede to the Istituto nazionale delle assicurazioni a quota share of each and every risk assumed by the transactions constituting the Italian portfolio.

The aforesaid quota share is 40 per cent for risks assumed during the first ten years after the authorisation to transact life assurance business in the kingdom in accordance with the present decree, and 30 per cent in the second decade, 20 in the third decade, and 10 in the subsequent decades, respectively.

For companies which are actually operating, and which have not ceded the portfolio to the Istituto nazionale delle assicurazioni, the computation of the decades shall be as from 1 April 1913.

The ceded shares are guaranteed by the government.

The companies shall report all contracts written in the kingdom to the Istituto within 30 days after completion of such contracts.

The cession shall be made by payment of a proportional share of the premium resulting from the assurance policy, less the proportional share of the acquisition expenses to the extent not exceeding three per cent of the sum assured nor 70 per cent of the first year's premium.

This limit shall be re-examined every three years upon proposal made by the Istituto nazionale delle assicurazioni, and the possible amendments shall be determined by the Royal Decree issued by the Minister of Corporations in agreement with the Minister of Finance.

In the years subsequent to the first one the proportional share of premium to be paid by private companies to the Istituto nazionale delle assicurazioni shall be decreased by the collecting expenses to an extent not exceeding five per cent of the annual premium.

The Istituto nazionale will have the power to refuse the cession of the policies corresponding to the risks assumed by the companies.

The amounts which the Istituto nazionale shall pay to the assurance companies for claims incurred or for matured policies, as well as the mathematical reserves inherent to the ceded shares, are earmarked in favour of the assured and beneficiaries of such policies.

Art. 25

The reserve earmarked for the fulfilment of the liabilities assumed by the assurance transactions (the mathematical reserve) relating to the Italian portfolio shall not be less than that resulting when the mortality and disability tables and the rate of interest referred to in Art. 19 are used as the basis.

The companies shall submit to the Ministry of Corporations at least every three years:--

(1) A comparison of the mortality expected in the aforesaid tables and of that actually experienced.

(2) A comparison of the aforesaid interest rate and of that actually obtained from investments of the reserves.

In case of deviations from these factors, and if they be so important as to justify grave doubts as to the safety of the technical foundation of the company, the Ministry of Corporations invites the company to justify the deviations, further measures being reserved.

Art. 26

Life assurance companies, both national and foreign, shall have in the kingdom, and shall earmark in favour of the assured whose policies form part of the Italian portfolio, the assets necessary to cover the mathematical reserves relating to this portfolio, and computed on the basis of factors referred to in Art. 25.

The same obligation applies also to companies which while not assuming new risks confine their activities to the management of the portfolio formerly built up.

The provisions regarding the deposits provided for in Art. 145 of the Commercial Code are hereby abrogated. The release of assets deposited shall be effected in accordance with the provisions set down in the Executive Decree of the Commercial Code (Art. 59 and 60). The deposits now existing are not subject to the obligation of reinvestment of the interests accrued thereon.

Art. 27

The mathematical reserves referred to in the preceding article shall be constituted in one or more of the following classes of assets:--

(1) In securities issued or guaranteed by the Italian government.

(2) In debentures issued by institutions authorised to transact real estate credit in Italy or her colonies.

(3) In annuities owed by the government and acquired by the companies by way of cession or subrogation.

(4) In real estate, free of mortgages, situate in the kingdom or colonies.

(5) In loans guaranteed by first mortgage on real estate situate in the kingdom or colonies, to an amount not exceeding half of the duly ascertained value of such real estate.

(6) In loans on own life policies within the limits of the corresponding surrender value.

(7) In deposits in cash with the Cassa depositi e prestiti or with savings banks--ordinary or postal--within the limits of five per cent of the reserves.

(8) In stocks of the Banca d'Italia and of the Istituto Italiano di Credito Fondiario.

(9) In other kinds of investments authorised by the Minister of Corporations in agreement with the Minister of Finance.

For cover of the aforesaid mathematical reserves the following may be used:--

(a) With their share relating to the life department, the deposits made according to the Commercial Code of 1865.

(b) Deposits provided for in Art. 145 of the Commercial Code, and in Art. 29 of the Act No. 305 of 4 April 1912.

The aforesaid reserves shall be constituted without deducting the shares ceded to reinsurance excepting those ceded to the *Istituto nazionale delle assicurazioni* and to the *Unione Italiana di riassicurazione* established in accordance with the Decree-Acts No. 1737 of 24 November 1921, and No. 1442 of 17 October 1922.

Art. 28

The securities referred to in the preceding article, if made out to bearer, shall be deposited with the *Cassa depositi e prestiti* or with an issuing bank.

Such securities, and in general all movable valuables, designed to cover the mathematical reserves, shall be earmarked in favour of the assured whose policies belong to the Italian portfolio according to the provisions to be set down in the Regulations (*Regolamento*).

On real estate a mortgage shall be registered in accordance with a decree of the Minister of Corporations. Subject to a decree of the same Minister the earmarking referred to in the preceding paragraph shall be registered in accordance with Art. 1994 of the Civil Code on mortgage loans in the case of a mortgage established to safeguard such loans. The cancellation of the aforesaid mortgage and of the aforesaid earmark shall be also subject to a decree of the Minister of Corporations. The aforesaid registrations and annotations shall be free from mortgage levies.

The rules for the estimate of the assets constituting the mathematical reserve and the manner and terms of the deposit, for its earmarking, its substitution and its release shall be set down in the Regulations.

The documents of credit concerning the deposit which originally were not subject to stamp duty shall be accepted without such duty so long as they remain earmarked for the *Cassa depositi e prestiti*. Similarly the receipts shall be free from proportion of same duty which are issued by the *Istituto nazionale* and by private companies in case of withdrawal of securities deposited with the aforesaid *Cassa depositititi prestiti* in execution of this decree, and of Art. 145 of the Commercial Code and Art. 29 of the Act No. 305 of 4 April 1912.

The deposits referred to in Art. 145 of the Commercial Code and in Art. 29 of the Act No. 305 of 4 April 1912, and other movable assets which constitute the mathematical reserves, and are earmarked to safeguard the assured in accordance with the provisions of the aforesaid articles are appropriated with a preferential right in favour of the whole of the assured, in accordance with Section 6 of the Art. 1958 of the Civil Code.

Art. 29

Life assurance companies, both national and foreign, shall allocate each and every year, from the net profits arising from their transactions in the kingdom, at least 10 per cent to constitute the ordinary contingency fund provided for in Art. 182 of the Commercial Code.

This allocation shall be continued until at least five per cent of the mathematical reserve is accumulated. Should the fund, after its establishment, decrease, whatever may be the reason, or if it is no longer equal to the required proportion, it shall be made up or increased in the same way.

The aforesaid contingency fund shall be deposited in one or more classes of investments provided for in Art. 27.

Art. 30

Insurance companies desirous of transacting classes of insurance other than life assurance shall set down in their articles of association which part of the capital and reserves is designed to meet the liabilities resulting from life assurances. and they shall have separate administration; such capital and reserves shall not be less than the amounts provided for in Art. 28 and 29.

.The assets relating to the conduct of life assurance shall not be available to meet the liabilities of any other nature.

Title III.--Indemnity Insurance. 1/

Art. 31

National companies desirous of transacting indemnity insurance and reinsurance business, foreign companies desirous of transacting in the kingdom indemnity insurance and reinsurance business, and those which in view of the transacting of reinsurance in the aforesaid classes, intend to establish an agency in the kingdom shall first obtain an authorisation thereto in accordance with the provisions and terms provided for in the preceding Art. 18.

1/ Supplemented by the Royal Decree-Act of 27 October 1927, No. 2100, converted into the Act of 28 May 1928, No. 1133.

Art. 32

In order to obtain the authorisation to transact indemnity insurance, the companies shall submit to the Ministry of Corporations a special application and furnish, if national, proof of their legal establishment, and if foreign, proof of having legally established an agency in the kingdom in accordance with Art. 230 of the Commercial Code.

The latter proof is also incumbent to foreign companies desirous of establishing an agency in the kingdom for the transaction of reinsurances.

For foreign companies the last two paragraphs of the preceding Art. 20 are applicable.

Art. 33

In order to be authorised to transact in the kingdom classes of insurance other than life assurance, insurance companies, both national and foreign, including mutual or co-operative companies, shall establish and earmark in favour of the general body of those assured by the contracts constituting the Italian portfolio, a deposit which shall be adjusted at the end of each and every financial year to 35 per cent of the gross premiums of the preceding year resulting from the insurances written in such year or previously, and included in the Italian portfolio in accordance with Art. 1.

In cases of a reduction in the earmarked deposits the Ministry of Corporations may order the excessive portion to be designed to meet the payments of claims outstanding and still unpaid.

The aforesaid rate is reduced:--

(a) To 15 per cent in the case of short-termed risks in accordance with the provisions and rules to be set down in the Regulations.

(b) This reduction does not apply to risks of hail and livestock business.

Art. 34

The Ministry of Corporations may exceptionally authorise for periods not exceeding two years, agents and intermediaries of Italian nationality to place the risks in insurance abroad with special companies which are not able, on account of their rules, to establish a legal agency in the kingdom.

The decree of authorisation for the aforesaid agents or intermediaries may fix other conditions and formalities, different from those required by the present Decree, by the Regulations and by other laws in force.

In order to act as intermediaries the companies or persons who have thus been authorised, shall provide a deposit in governmental securities or in securities guaranteed by the State, which in each individual case will be fixed by the decree of authorisation, and in any case shall not be less than 150,000 lire.

The Ministry of Corporations may request the intermediary, at any time and at his discretion, to make a larger deposit than that fixed by the decree of authorisation in relation to the entirety of the business and to the classes of risks placed by same.

Art. 35

The provisions of the Art. 27 and 28 of this Decree shall apply for the establishment of the deposit referred to in Art. 33, for the depositing and earmarking of the assets constituting such deposits, also those referred to in Art. 34, and for the privilege which belongs to the general body of the assured as to such assets.

Title V.--State Supervision of Private Insurance Companies.

Art. 42

The supervision of the application of this Decree is incumbent on the Ministry of Corporations. The fee for supervision referred to in Art. 42 of the Decree-Act of 21 April 1919, No. 603 [1] shall be also paid by the capitalisation and savings companies and by the intermediaries authorised in accordance with the provisions of this Decree.

Art. 43

The Ministry of Corporations has the authority to order inspections at the domicile or at the general agency of the companies and dependent concerns, agencies, and local offices which in any way transact the business of insurance, reinsurance or that of intermediaries, in order to control the proper observance of the provisions set down in this Decree in the Regulations or in the Decrees of authorisation.

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[1] Superseded by Art. 40 of the Decree-Act No. 3184 of 30 December 1923.

Wherever it is found that there are companies, persons or legal entities who transact business in contravention of this Decree, the Ministry of Corporations shall have the power to investigate the infringement by an examination made by its own officials.

The companies and their directors, representatives, managers, and agents, shall place at the disposal of the officials delegated to inspect them, all books, registers, and documents, and shall furnish all information and explanations which they may require.

The national and foreign insurance companies, reinsurance companies or intermediary concerns shall furnish to the Ministry of Corporations all information and statistical data which this Ministry may require.

Art. 44

In the case of non-observance of the provisions of this Decree, of the Regulations and of the Decrees of authorisation, or in the case of irregular functioning of the company, the Ministry of Corporations may prohibit the acceptance of new business by the companies so long as such companies do not comply with the aforesaid provisions and do not remove the irregularities.

The provisions relating to the issue, revocation and publication of the Decrees of prohibition shall be set down in the Regulations.

Art. 45

In the case of continuous non-observance of the provisions of this Decree and Regulations, and in the case of transacting business in contravention to the provisions of this Decree and Regulations, the Ministry of Corporations has authority to put the defaulting concerns into liquidation.

To carry through the liquidation, the provisions of the following Title VI shall analogously apply, so far as possible.

Title VI.--Liquidation and Failure of Insurance Companies

Art. 46

National life assurance companies, also when writing indemnity insurances, not possessing assets which cover the mathematical reserves, as well as agencies of foreign companies, shall if the assets located in the kingdom are not sufficient to cover the mathematical reserves of contracts written in the kingdom, be put into liquidation in accordance with the provisions contained in the following articles.

Art. 47

The Ministry of Corporations, after having ascertained the deficiency in the assets in accordance with provisions which will be fixed in the Regulations, shall invite the company to make up such deficiency within a month; if this term expires without such readjustment or without giving adequate reasons to the Ministry, they declare, by way of a Royal Decree to be published in the Gazzetta Ufficiale of the kingdom, the liquidation of the company. A revocation of this measure cannot take place should the latter make up the deficiency.

The Decree shall provide the nomination of a Royal Liquidating Commissioner who assumes the administration of the company, with the powers of liquidators of commercial companies.

The liquidation is made under the supervision of the Ministry of Corporations.

The functions of the liquidator are determined in the Royal Decree of nomination and are executed at the expense of the liquidation.

The measures of the Ministry may only be opposed by way of an appeal to Section IV of the State Council.

Art. 48

Notice of cancellation to be given by the assured being reserved, the assurance contracts in force continue to cover the risks up to 60 days after the publication of the Decree of liquidation in the Gazzetta Ufficiale. The persons entitled to sums assured, or to indemnities under policies matured or involved in claims, shall participate in the distribution of assets according to the provisions given in Art. 50.

Life assurance contracts shall be transferred to the Istituto nazionale delle assicurazioni; on behalf of the latter, the risk shall begin to run after the expiry of the term referred to in Par. 1 of this article. The sums assured by the Istituto nazionale delle assicurazioni will be determined on the basis of the rates in force, and after deduction of the commissions of acquisition according to the provisions which shall be established in the Regulations.

Art. 49

The Royal Commissioner may bring an action against the directors on account of their responsibility.

The provisions of the Commercial Code regarding crimes in the matter of failure shall apply to companies put into liquidation according to the present Decree.

Art. 50

Life assurance policies in force shall participate in the distribution of assets in proportion to the amount of the mathematical reserve computed on the basis of pure premiums.

Indemnity insurance policies in force shall participate in the distribution of assets in proportion to the fraction of the premium corresponding to the risk still outstanding.

Persons entitled to sums assured by policies matured or involved in claims, or to indemnities, shall participate in the distribution in proportion to the amount of such sums assured or of the indemnities.

For all other claims the Art. 700, 701, 702 and 703 of the Commercial Code shall apply, taking effect from the date of publication of the Decree of liquidation.

Art. 51

According to the terms of the preceding Art. 28 the following claims have a preferential right to the guarantee deposits provided for in Art. 145 of the Commercial Code and in Art. 29 of the Act. No. 305 of 4 April 1912, also separately on each deposit, dependent on whether the contracts were concluded before or after 31 December 1912, and also on the whole of the assets designed to cover the mathematical reserves:--

(a) Claims relating to the sums assured due under life policies because of death or maturity incurred within the period provided for in the aforesaid Art. 48.

(b) Claims relating to the mathematical reserves pertaining to policies designed for distribution, and to sums due owing to surrenders requested at least three months prior to the indemnification from the liquidation.

On the assets earmarked to cover the deposits required by the aforesaid Art. 33, the claims relating to the following shall have a preferential right:--

(1) Claims relating to the indemnities due for losses adjusted during the period provided for in the above Art. 48.

(2) Claims relating to the fractions of premiums corresponding to the risk still outstanding under policies admitted for distribution.

The claims referred to in the preceding paragraph shall have a preferential right to the aggregate amount of sums owed by the reinsurance companies in connection with the reinsurance treaties and agreements with the company in liquidation.

Art. 52

The methods for ascertaining the financial conditions of the companies and the manners and methods of the liquidation shall be set down in the Regulations.

Art. 53

In case of failure of life and indemnity insurance companies the provisions of Art. 50 and 51 shall apply to the distribution of assets in regard to the assured and their beneficiaries and to the preferential right which belongs to them. The provisions of Art. 50 shall apply to the reinsurance companies.

In the case of life and indemnity insurance companies which have already been declared bankrupt, whatever be the condition of the bankruptcy proceedings, and in the case of companies which may be declared bankrupt in the future, the claims corresponding to policies in force at the date of declaration of bankruptcy, and for which the application of the claims has not been sent in by the interested persons, shall be listed ex officio at the request of the receiver.

In the case of non-observance of the provisions referred to in the preceding paragraph, each of the creditors not officially listed and not satisfied, or the public authority on their behalf, may require the bankruptcy to be reopened at any time, even when the bankruptcy proceedings are already terminated or suspended.

Royal Decree-Act, No. 1290, of 12 July 1934, converted into the Act of 12 February 1935.

Art. 1

Insurance and capitalisation companies, both national and foreign, which at the time of coming into force of this Decree are not yet authorised to operate in the kingdom, shall have a capital stock, or in the case of mutual societies a guarantee fund, not less than:--

(a) Twenty million lire of which at least half is fully paid if the activities extend to life assurance or capitalisations.

(b) Ten million lire of which at least half is fully paid if the activities extend to insurances against the risks of fire or transport.

(c) Five million lire of which at least half is fully paid in case of transacting insurances against the risks of accidents, public liability, hail and of other classes.

To companies only transacting one class of insurance, unless coming under the classes specified above, the authorisation may be given by a decree of the Ministry of Corporations, to have the capital stock or the guarantee fund confined to one-half of the amount given in the preceding paragraph (c).

Art. 2

Omitted--It allows the companies already existing to have capital to the extent of two-fifths of the above amounts.

Art. 5

Companies, both national and foreign, authorised to operate in the kingdom will be able to extend their activities to the colonies, so far as they obtain an authorisation of the Ministry of Colonies, in agreement with the Ministry of Corporations.

Art. 6-11.--Omitted.

Royal Decree-Act, No. 2,100, of 27 October 1927, converted into the Act, No. 1,133, of 28 May 1928 [1]

Art. 1

Indemnity insurance companies, both national and foreign, shall not obtain the authorisation to transact insurances unless they prove, in addition to compliance with the provisions of the Royal Decree of 29 April 1923, No. 966, converted into Act of 17 April 1925, No. 473, that they possess in case of joint stock companies and also co-operatives, a capital stock not less than five million lire of which at least 2,500,000 lire is fully paid-up, or in case of mutual societies a guarantee fund not less than the aforesaid amount.

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[1] Partially amended and supplemented by Royal Decree-Act No. 1290, of 12 July 1934 (see page 184).

Art. 2

The deposits which companies, both national and foreign, shall make for the transaction in the kingdom of insurances other than life may in no case be less than the amount of 200,000 lire for national companies, which in accordance with their articles of association can only transact one class of insurance, and for foreign companies which have been authorised only to transact in the kingdom one class of insurance; or less than 500,000 lire for companies, both national and foreign, which in accordance with their articles of association can transact, or are authorised to transact, several classes of insurance.

The said minimum is likewise required for national companies to enable them in any way to commence insurance transactions, also for foreign companies to enable them in any way to commence insurances with the kingdom.

Par. 3.--Omitted (alleviations for small local mutual societies).

Art. 3

The cover of the mathematical reserves and deposits of life and indemnity insurance companies shall be provided from assets owned by such companies.

Art. 4, 5 and 6.--Omitted (transitory provisions).

Regulations Relative to the Act on Private Insurance. (Approved by Royal Decree No. 63 of 4 January 1925).

Title I.--Assurances on Human Life.
Chapter III.--Reserves of Private Assurance Companies.

Art. 25

The reserve designed to meet the obligations assumed from assurances on human life (the mathematical reserve), and relating to the Italian portfolio, cannot be less than that resulting when the mortality and disability tables and rates of interest adopted by the company, with approval of the Ministry of Corporations, have been taken for basis.

The insurance companies shall possess in the kingdom, and shall earmark in favour of the aggregate of the assured whose policies form part of the Italian portfolio, the assets necessary to cover the mathematical reserve incidental to the aforesaid portfolio and calculated on the technical basis referred to in the preceding paragraph.

Art. 26.--Omitted (identical with Art. 27 of Royal Decree-Act of 29 April 1923, No. 966, See p. 175 and 176).

Art. 27

The securities referred to in the preceding article shall be in the custody of the Cassa depositi e prestiti or of an issuing bank, without prejudice to the provisions contained in the third paragraph of this article. The certificate or the receipt of custody shall contain the declaration of earmarking in favour of the policyholders whose policies form part of the Italian portfolio.

No change in the securities in custody can be made apart from the express approval of the Ministry of Corporations.

The companies are exempt from the obligation of custody, as provided for in the first paragraph of this article, in the case of securities made out in the company's name and endorsed with an earmark in favour of the aggregate of the assured by the legal entity which has issued such securities.

The annuities referred to in No. 3 of the preceding article shall be earmarked by an authenticated declaration notified to the Ministries, to be made by the companies in the balance sheet, disclosing corresponding amounts. On receipt of such notification the Ministries shall order the amount of the quota-part of the capital included in the aforesaid annuities to be paid to the Cassa depositi e prestiti which shall arrange for the reinvestment in securities referred to in Numbers 1 and 2 of the above Art. 26, in accordance with the notification of the interested company, or in default of such notification, ex officio. On the other hand, it is allowable that the annuities be freely paid to the companies subject to the latter's proof by the declaration of the Ministry of Corporations that the earmarked assets are sufficient to cover the mathematical reserves.

The Ministry of Corporations, having verified the unencumbrance of the property, of the funds, or of the claim, shall order by its own Decree, the registration of the mortgage on the real estate or, in the case of mortgage loans, the notification of the assignment according to the terms of Art. 1994 of the Civil Code, to be entered in the margin of the registration of the mortgage established to guarantee such loans.

Cash deposits in accordance with the terms of No. 7 of the preceding Art. 26 shall be made with the Cassa depositi e prestiti or with credit companies or with savings banks, ordinary or postal. The document confirming the deposit and handed over to the company, shall be endorsed by the depository institute with a declaration of earmark, and with the obligation that no refund shall be made unless subject to the express approval of the Ministry of Corporations.

Art. 28.--Omitted (Contains provisions regarding the valuation of the assets).

Art. 29

Companies, both national and foreign, transaction assurances of human life, shall attach to their balance sheet a detailed list of assets earmarked to cover the mathematical reserves and deposits, indicating for each and every asset the value attributed thereto according to the provisions of the preceding article.

Art. 30

At the end of each financial year the extent of the mathematical reserve shall be ascertained, and the estimate of assets designed to cover the reserve shall be submitted for revision.

Within a month following the approval of the balance sheet, the companies shall make up the possible deficiencies resulting from comparing the mathematical reserves with the value of assets designed to cover such reserves, and shall furnish to the Ministry of Corporations the respective documents for proof.

Alternatively, when a surplus in the earmarked assets is disclosed as compared with the amount of reserves, the companies may request the release of such surplus.

The cancellation of the registration of a mortgage, of the annotation of earmark in the case of mortgage loans, and in general the release of assets shall be effected by Decree of Minister of Corporations, who in order to ascertain the notified surplus, may order at his discretion, due verifications of the applying company.

Art. 31

When the company, for any reason whatever, ceases to transact insurance, it shall only be able to obtain the total release of all its earmarked assets when it proves that all its debts or obligations assumed in connection with the insurances have ceased. Documents proving such extinction shall be attached to the application for the release, and the Ministry, having made the due verifications and having ordered the publication and the posting of the notice on the board, shall authorise the release by its Decree.

In exceptional cases in which the fulfilment of the insured claims cannot be arrived at on the part of the company, either in whole or in part, unless the assets earmarked to cover the reserves are called in, the Ministry of Corporations shall have the power to permit the release of such assets, in whole or in part, and to place such assets, subject to terms which result from the case, at the disposal of the companies or of their voluntary or judicial liquidators, or Royal Commissioners named in accordance with the provisions of the Art. 45 and 47 of the Decree-Act, for the sole purpose of fulfilment of obligations depending upon the assurances assumed.

Art. 32

The companies have the faculty, having obtained permission from the Ministry of Corporations, to substitute the assets designed to cover the reserve by other assets of the class referred to in the preceding Art. 26; in any case the value of the new assets shall not be less than the value of the assets which are being replaced.

Art. 33

The deposits made in accordance with the terms of Art. 145 of the Commercial Code and of Art. 29 of the Act No. 305 of 4 April 1912, may be released only after termination of the liabilities for which such deposits have been established. It may, however, be permitted to convert the deposited securities into securities made in the company's name and earmarked and subject to terms and requirements referred to in the third paragraph of Art. 27 of these Regulations.

Art. 34

A special preferential right for contracts made before the coming into force of the Decree-Act, and/or existing, in accordance with Art. 28 and 51 of the Decree-Act, on the deposits referred to in the preceding article shall be understood as restricted to that part of such deposits which is to be maintained in proportion to liabilities still in force, resulting from the aforesaid contracts.